

1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MISSOURI
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,) Nos. 12-00296-01-CR-W-BCW
7) and 12-00296-01-CR-W-BCW
8 v.) January, 25, 2013
9 JI LI HUANG, and) Kansas City, Missouri
10 XIAO GUANG QI) CRIMINAL
11)
12 Defendants.)
13

14 TRANSCRIPT OF GUILTY PLEA AND SENTENCING PROCEEDINGS
15 BEFORE THE HONORABLE BRIAN C. WIMES
16 UNITED STATES DISTRICT JUDGE

17 Proceedings recorded by electronic voice writing
18 Transcript produced by computer
19

20 APPEARANCES

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Denise C. Halasey, CCR No. 1257
Certified Court Reporter

January 25, 2013

(Proceedings began at 11:15 AM)

3 THE COURT: Good Morning everyone. Let
4 the Court call the case. This is United States of America
5 versus -- and I'll spell the last name,
6 X-I-A-O-G-U-A-N-G-Q-I, pronounced Mr. Xiao Guang Qi. Case
7 No. 12-00296-02CRW.

8 And further the Court will call United States
9 versus Ji Li Huang. J-I-L-I-H-U-A-N-G. Case No.
10 12-00296-01-CRW. Can I have parties enter their
11 appearance for the record, please?

12 MR. CASEY: Brian Casey and Matt Wolesky
13 appearing on behalf of the United States. And we are
14 joined by case agents, Jerry Crabtree and Brice Taylor.

THE COURT: Okay. Thank you.

16 MR. HOBBS: Good morning, Judge. J.R.
17 Hobbs and Yi Sun appearing on behalf on Mr. Huang who
18 appears in person. Also seated at counsel table is our
19 paralegal, Dru Colhour.

THE COURT: Thank you.

21 MR. GADDY: Good morning, Judge. Brian
22 Gaddy and Jerry Weis on behalf of Mr. Qi.

23 THE COURT: Thank you, Counsel. My
24 first order of business is to swear in the interrupter at
25 this time.

1 JANE HU, being called as an interpreter in the
2 Spanish language, was duly sworn to translate into the
3 Spanish language all questions put to the witness, and he
4 answers of said witness into the English language.

5 THE COURT: Thank you. Well, these
6 matters were set today for the purpose of Mr. Huang and
7 Mr. Qi to enter pleas of guilty. And also I have
8 previously talked with Counsel, if the Court accepts the
9 pleas of guilty, that the Court will immediately take up
10 sentencing on both matters.

11 I had talked to Counsel in chambers on how to
12 procedurally, and they talked to the Court how to
13 procedurally proceed today. It's my intent to do the
14 pleas of Mr. Huang and Mr. Qi together. The Court will --
15 and this may be for purposes of the interpreter, there are
16 some questions I will address specifically to each
17 defendant, and then there will be some that I can address
18 generally to the defendants. And I will look to them and
19 I will call their name for them to respond.

20 With that said, I think the best way to go
21 about, I'm trying to see how we can get everyone a
22 microphone. Normally, I have the pleas take place here at
23 the podium.

24 MR. HOBBS: We can come up here.

25 MR. CASEY: And I can stand up here.

1 MR. HOBBS: We can share.

2 THE COURT: Is that as far as it
3 stretches?

4 THE CLERK: Yes.

5 THE COURT: The first order of business
6 is for Mr. Huang and Mr. Qi that you be sworn in at this
7 time. So if you can raise your right hand to be sworn.

8 JI LI HUANG AND XIAO GUANG QI

9 Called as a witness on behalf of the COURT, were
10 duly sworn, and testified as follows:

11 THE COURT: And what I'll do just to be
12 clear this is a little different taking the pleas
13 together, but Mr. Huang I wanted to let you know, sir,
14 I'll look to you to respond to a question. And then Mr.
15 Qi, I will look to you to respond to the question. Okay.

16 BY THE COURT:

17 Q. Now, Mr. Huang, you understand you are now under
18 oath; is that correct?

19 A. (By Mr. Huang) Yes.

20 Q. You understand that, Mr. Qi?

21 A. (By Mr. Qi) Yes.

22 Q. And further you understand if you answer any
23 questions falsely, that answer may be later used against
24 you in a prosecution for making a false statement. Do you
25 understand that, Mr. Huang?

1 A. (By Mr. Huang) Yes.

2 Q. Do you understand that, Mr. Qi?

3 A. (By Mr. Qi) Yes.

4 Q. Okay. You know what question is coming but, I
5 ask for you to wait until I complete or finish the entire
6 question before you respond. Okay.

7 THE COURT: Mr. Hobbs, I'm going to look
8 to you first for Mr. Huang. Could you indicate what Mr.
9 Huang is pleading guilty to?

10 MR. HOBBS: Yes, Judge. Mr. Huang is
11 prepared to plead guilty to Count I of the indictment
12 charging him with violating Title 18 U.S.C. § 183285. In
13 other words, a conspiracy to commit theft of trade
14 secrets.

15 THE COURT: Okay. And what is the range
16 of punishment for that crime?

17 MR. HOBBS: Range of punishment by
18 statute is zero to ten years range, no more than a
19 \$250,000 dollar fine, a \$100 dollar special assessment.

20 THE COURT: Okay. And Mr. Hobbs, I have
21 received, the Court has received a copy of this plea
22 agreement with the United States government. Have you had
23 the opportunity to discuss this plea agreement with
24 Mr. Huang?

25 MR. HOBBS: Yes, Judge.

THE COURT: And does this plea agreement represent the entirety of the total of the agreement that you have with the government?

4 MR. HOBBS: Yes, Judge.

5 THE COURT: And I have here showing Mr.
6 Huang signing this plea agreement. Did you witness him
7 sign this?

8 MR. HOBBS: Yes, sir, this morning.

9 BY THE COURT:

10 Q. Mr. Huang, same questions to you, sir. Did you
11 have an opportunity to review, read and discuss this plea
12 agreement with your attorney?

13 A. Yes.

Q. And you did so before you signed it?

15 A. Yes.

16 Q. And does this plea agreement represent the
17 entirety or all of the agreement that you have with the
18 government?

19 A. Yes.

Q. And have you had adequate time -- strike that.

21 Let me put it to you this way: Do you have any questions
22 as it relates to the terms of this agreement? Or do
23 you understand all the terms of this agreement?

24 A. Yes, I do.

25 Q. Okay. And this is your signature; is that
6

1 correct? And you signed it on today's date?

2 A. Yes.

3 Q. Okay. Thank you.

4 THE COURT: Mr. Gaddy, let me ask you,
5 sir, what is your client Mr. Qi pleaing guilty to, and
6 what is the range of punishment, sir?

7 MR. GADDY: Judge, similar to
8 Mr. Huang's plea agreement, Mr. Qi has agreed to plead
9 guilty to Count I of the indictment, charging a violation
10 of 18 U.S.C. § 1832(a)(5), which is a conspiracy to commit
11 theft of trade secrets. Mr. Qi has signed the plea
12 agreement in my presence earlier today. The range of
13 punishment for this plea is similar to what was stated for
14 Mr. Huang. The statutory range of punishment is not more
15 than ten years of imprisonment, \$250,000 dollar fine and a
16 \$100 dollar mandatory special assessment.

17 THE COURT: Okay. And Mr. Gaddy this
18 plea represents the entirety of the agreement that you
19 have with the government?

20 MR. GADDY: It does, Judge.

21 THE COURT: And you witnessed your
22 client, I have the original here, it appears to be, Mr. Qi
23 who has signed this agreement?

24 MR. GADDY: Yes, sir.

25 THE COURT: Okay.

1 BY THE COURT:

2 Q. Let me ask you Mr. Qi, sir, have you had the
3 opportunity to read the plea agreement, and to discuss it
4 with your attorney, Mr. Gaddy?

5 A. Yes.

6 Q. And does this plea agreement represent the total
7 or the entirety of the agreement that you have with the
8 government?

9 A. Yes.

10 Q. And do you understand the terms of the plea
11 agreement?

12 A. Yes.

13 Q. Okay. And in fact, you signed that plea
14 agreement today; is that correct?

15 A. Yes.

16 Q. Okay. And just so the parties know if at any
17 time that you don't understand the question or I need to
18 rephrase it, please let the Court know. Okay? Is that a
19 yes?

20 A. (By Mr. Huang) Yes.

21 A. (By Mr. Qi) Yes.

22 Q. Okay. Thank you. Let's first start with
23 Mr. Huang. Sir, please state your name for the record?

24 A. Ji Li Huang.

25 Q. Sir, what is your date of birth?
8

1 A. August 18th, 1967.

2 Q. That makes you how old, sir?

3 A. 46.

4 Q. Sir, what is your last grade completed in school
5 or your education level?

6 A. 3rd year in high school.

7 Q. Okay. Sir, do you read or write the English
8 language at all?

9 A. No.

10 Q. Okay. And in any way do you understand the
11 English language?

12 A. No.

13 Q. Okay. Mr. Huang, have you taken any alcohol or
14 drugs or medication in the last two days?

15 A. I didn't drink, but I took my medication.

16 Q. What type of medications, sir?

17 A. For my stomach.

18 Q. Okay. The purpose of that question is to make
19 sure you fully understand why we are here, and what is
20 going on today?

21 A. Yes, I do understand.

22 Q. And that medication wouldn't affect your ability
23 to understand or proceed in anyway what is happening here
24 today; does it?

25 A. It would not.

1 Q. Okay. Sir, have you ever been treated for a
2 mental disease or defect?

3 A. No.

4 Q. Okay. Do you believe that you are competent to
5 proceed or move forward here today with this plea and
6 sentencing?

7 A. Yes.

8 Q. Okay.

9 THE COURT: Mr. Hobbs, do you have any
10 reason through defendant's conduct or otherwise to believe
11 he is not competent to proceed?

12 MR. HOBBS: No, Judge.

13 THE COURT: Okay. Thank you.

14 BY THE COURT:

15 Q. Mr. Huang, do you understand what is going on
16 here today, sir?

17 A. Yes.

18 Q. And you have had the opportunity to fully discuss
19 with your attorney what you're doing here today?

20 A. Yes.

21 Q. Okay. In your own words to the best of your
22 ability, tell the Court what you're doing here today, sir?

23 A. To accept a plea of guilty on the charge on
24 attempt of secret trade theft. And also to accept
25 sentencing from the Judge.

1 Q. Okay. This might be a good time to take this up.
2 Now, you understand if the Court accepts this plea
3 agreement the parties have entered into, if this Court
4 accepts a binding agreement; do you understand that?

5 A. I'm sorry.

6 Q. Do you understand that? And let me phrase that a
7 little differently. The parties, the government and you
8 have entered into an agreement?

9 A. Yes.

10 Q. Where you'll have a sentencing range,
11 notwithstanding, a sentencing range of no time
12 incarcerated up to 18 months incarceration; do you
13 understand that?

14 A. Yes, I do.

15 Q. And you'll will be assessed a \$250,000 dollar
16 fine?

17 A. Yes.

18 Q. And part of that agreement is too that you will
19 be assessed a \$100 dollar special assessment?

20 A. Yes, I do.

21 Q. And the forfeiture of property; do you understand
22 that?

23 A. Yes, I do.

24 Q. Okay. So it is your desire today to withdraw
25 your plea of not guilty and to enter a plea of guilty; is

1 that correct?

2 A. Yes.

3 Q. Okay. And Mr. Qi, I'm going to turn to you now.

4 Same questions. Please state your name for the record,
5 sir?

6 A. (By Mr. Qi) Xiao Guang Qi.

7 Q. And what is your date of birth?

8 A. December 15th, 1980.

9 Q. And that makes you how old?

10 A. 32.

11 Q. Sir, what is your education level or what is the
12 last grade of school completed?

13 A. College graduate.

14 Q. Okay. Now, do you read, write and understand the
15 English language?

16 A. Basic, yes. I can write too.

17 Q. Okay. Sir, have you taken any alcohol or drugs
18 or medication in the last two days?

19 A. No.

20 Q. Okay. Have you ever been treated for a mental
21 disease or defect or seen a psychiatrist or psychologist
22 before, sir?

23 A. No.

24 Q. Do you believe you are competent to proceed here
25 today?

1 A. Yes.

2 Q. Okay.

3 THE COURT: Mr. Gaddy, do you have any
4 reason through Mr. Qi's conduct or otherwise to believe
5 he's not competent?

6 MR. GADDY: No reasons, Judge. He is
7 competent.

8 THE COURT: Thank you.

9 BY THE COURT:

10 Q. Mr. Qi, you understand what is going on here
11 today?

12 A. Yes, sir.

13 Q. And you have had the opportunity to fully discuss
14 with your attorney what you are here for today; is that
15 correct?

16 A. Yes.

17 Q. In your own words tell me what is going to happen
18 today?

19 A. I'm pleading guilty to the charge against me.

20 Q. Okay. And what is your understanding -- well,
21 let me, why don't I do it this way. If the Court accepts
22 the plea of guilty, you know, the agreement between the
23 parties, between you and the government, first, is that
24 you be sentenced to time served; do you understand that?

25 A. Yes.

Q. And then you wouldn't have no term of supervised release?

3 A. Yes.

Q. You would pay a \$20,000 dollar fine?

5 A. Yes.

Q. With a \$100 dollar special assessment?

7 A. Yes.

8 Q. Okay.

13 MR. GADDY: Judge, it is in Paragraph 20
14 of the plea agreement. Paragraph 20 in general terms
15 talks about immigration consequences.

16 THE COURT: Okay.

17 MR. GADDY: The last paragraph of
18 Paragraph 20 indicates that the defendant stipulates to
19 voluntarily depart for the United States at his own
20 expense within seven days from completion of the hearing.
21 That is a condition of the plea agreement we have with the
22 United States.

THE COURT: Okay. Thank you.

24 BY THE COURT:

25 Q. And you understand that is a condition of this
14

1 plea agreement, sir?

2 A. Yes.

3 Q. Okay. Because you all are pleading guilty you
4 have certain rights, and I want to go over those rights
5 with you. If you have any questions or you don't
6 understand, please let the Court know. And again, with
7 these questions I will look to you first Mr. Huang, and
8 then to you Mr. Qi. You understand that you have the
9 right to plead not guilty and have a trial by a judge or
10 jury; do you understand that Mr. Huang?

11 A. (By Mr. Huang) Yes.

12 Q. Mr. Qi?

13 A. (By Mr. Qi) Yes.

14 Q. Okay. Also during that trial you have the right
15 to be represented by effective assistance of counsel; do
16 you understand that Mr. Huang?

17 A. Yes.

18 Q. Mr. Qi?

19 A. Yes.

20 Q. Okay. You are presumed innocent throughout the
21 trial until a judge or jury finds you guilty; do you
22 understand that Mr. Huang?

23 A. Yes.

24 Q. Mr. Qi?

25 A. Yes.

1 Q. Okay. The government has the burden of proving
2 you guilty beyond a reasonable doubt; do you understand
3 that Mr. Huang?

4 A. Yes.

5 Q. Mr. Qi?

6 A. Yes.

7 Q. Okay. During that trial you would have the right
8 to confront witnesses. That is the government will bring
9 in witnesses to testify against you and your attorneys
10 would have the right to cross-examine those witnesses; do
11 you understand that Mr. Huang?

12 A. Yes.

13 Q. Mr. Qi?

14 A. Yes.

15 Q. Okay. You would also have the right to bring in
16 witnesses to testify on your behalf and use the subpoena
17 power or power of the Court to compel or make them appear
18 in your case; do you understand that Mr. Huang?

19 A. Yes.

20 Q. Mr. Qi?

21 A. Yes.

22 Q. You would have the right to testify on your own
23 behalf, but if you chose no one can make you testify and
24 the Jury would be told not to hold your choice not to
25 testify against you. Do you understand that Mr. Huang?

1 A. Yes.

2 Q. Mr. Qi?

3 A. Yes.

4 Q. If you were tried by a jury all twelve jurors
5 must find you guilty beyond a reasonable doubt. That is
6 known as a unanimous verdict. Do you understand that
7 Mr. Huang?

8 A. Yes.

9 Q. Mr. Qi?

10 A. Yes.

11 Q. Okay. Thank you. Okay. You both recognize that
12 pursuant to the plea agreement that you are waiving your
13 right to appeal, a finding of guilt, and the sentence
14 except on the grounds of ineffective assistance of counsel
15 or prosecutorial misconduct? Let me repeat that. You
16 understand that by virtue of this plea agreement you are
17 waiving your right to appeal a finding of guilt and the
18 sentence except on the grounds of ineffective assistance
19 of counsel, prosecutorial misconduct or an illegal
20 sentence by this Court. Do you understand that,
21 Mr. Huang?

22 A. I do. Yes.

23 Q. Mr. Qi?

24 A. Yes.

25 Q. Thank you. Now, has your attorney discussed

1 these rights with you? And I know they are contained in
2 the plea agreement, Mr. Huang?

3 A. Yes.

4 Q. Mr. Qi?

5 A. Yes.

6 Q. Okay. You understand that by pleading guilty
7 you're giving up any and all defenses you may have in this
8 case; do you understand that Mr. Huang?

9 A. I'm sorry.

10 Q. By pleading guilty in this case any defense that
11 they may have to the case, they are waiving that by
12 pleading guilty?

13 A. Yes.

14 Q. And you understand that, Mr. Qi?

15 A. Yes.

16 Q. Okay. And you understand if the Court accepts
17 this plea of guilty, there will not be a trial; do you
18 understand that, Mr. Huang?

19 A. Yes.

20 Q. Mr. Qi?

21 A. Yes.

22 Q. You are pleading guilty because you're guilty; is
23 that correct, Mr. Huang?

24 A. Yes.

25 Q. Mr. Qi?

1 A. Yes.

2 Q. And you're pleading guilty voluntarily; is that
3 correct, Mr. Huang?

4 A. Yes.

5 Q. Mr. Qi?

6 A. Yes.

7 Q. And just want to make sure I say your name so
8 they know that you are responding to me. And I
9 understand.

10 Now, no one has coerced you, forced you or
11 threaten you to plead guilty; have they, Mr. Huang?

12 A. Nobody.

13 Q. Mr. Qi?

14 A. No.

15 Q. And have you had ample time to discuss this case
16 with your attorney, Mr. Huang?

17 A. Yes.

18 Q. Mr. Qi?

19 A. Yes.

20 Q. Do you need anymore time to talk with your
21 attorney, Mr. Huang?

22 A. No.

23 Q. Mr. Qi?

24 A. No.

25 Q. Okay. Up to this point do you want the Court to
19

1 believe and rely on what you have told me, Mr. Huang?

2 A. Yes.

3 Q. Mr. Qi?

4 A. Yes.

5 Q. Okay. Do you all have any complaints with your
6 attorney? Let me start with you Mr. Huang?

7 A. No.

8 Q. Are you satisfied with their services?

9 A. Very much so.

10 Q. Have they done everything you asked them to do?

11 A. Yes.

12 Q. Have they done anything you didn't want them to
13 do?

14 A. No.

15 Q. Did they talk to you about your case and the
16 evidence that could be presented against you if this case
17 went to trial?

18 A. Yes.

19 Q. Okay. And you are satisfied with their
20 representation?

21 A. Yes.

22 Q. Okay. Mr. Qi, I'm going to ask you the same
23 questions. Do you have any complaints with your attorney,
24 sir?

25 A. No.

1 Q. Are you satisfied with their services?

2 A. Yes.

3 Q. Have they done everything you asked them to do?

4 A. Yes.

5 Q. Have they done anything you didn't want them to do?

6

7 A. No.

8 Q. Have they had the opportunity to talk with you about the case and the evidence that could be presented 10 against you if this matter went to trial?

11 A. Yes.

12 Q. Okay. Let me ask both of you. Mr. Huang, up to 13 this point do you have any questions of the Court?

14 A. No.

15 Q. Mr. Qi, do you have any questions of the Court?

16 A. No.

17 Q. Let's start with you Mr. Huang. The Court is 18 going to refer to the plea agreement, in particular 19 paragraph number three. But I'm going to look to Mr. 20 Casey.

21 THE COURT: Mr. Casey, does paragraph 22 three fairly and accurately set forth the facts and 23 circumstances of the crimes that they are charged with?

24 MR. CASEY: Yes, it does, Your Honor.

25 THE COURT: Okay. Are there any
21

1 additions or changes or supplementation to that paragraph?

2 MR. CASEY: No, Your Honor. Paragraph
3 three fairly sets forth the facts that the United States
4 would prove in trial and it sufficiently covers the
5 elements of the crime.

6 THE COURT: Okay. Let me ask you, Mr.
7 Hobbs. Have you and your client had adequate time to
8 review paragraph three of the plea agreement?

9 MR. HOBBS: Yes.

10 THE COURT: Okay. In reviewing that
11 there aren't any additions, changes, or supplementation
12 that you would like to make to paragraph three, are there?

13 MR. HOBBS: No, sir.

14 THE COURT: Okay.

15 BY THE COURT:

16 Q. Mr. Huang, have you had the opportunity to go
17 over, read, and review with your attorney the facts and
18 circumstances contained in paragraph three, sir?

19 A. Yes.

20 Q. And sir, are you here today telling the Court
21 that you committed those acts alleged in that paragraph
22 that gave rise to you committing the crime in which you
23 are charged?

24 A. Yes.

25 Q. Okay.

THE COURT: Mr. Qi, again, Mr. Casey
looking at Mr. Qi's plea agreement, does paragraph three
fairly and accurately set forth the facts and
circumstances of a crimes in which he is charged with,
sir?

6 MR. CASEY: Yes, Judge, Your Honor. I
7 think it is all relevant in respects to the same with Mr.
8 Huang. And I think it summarizes the evidence the
9 government would pursue in trial with regards to this
10 case.

11 THE COURT: Okay. Thank you. Now, have
12 you had, Mr. Gaddy, adequate time to read and review
13 paragraph three of the plea agreement with your client?

14 MR. GADDY: I have judge.

15 THE COURT: And do you agree with
16 paragraph three?

17 MR. GADDY: We do.

18 THE COURT: Okay.

19 BY THE COURT:

20 Q. Mr. Qi, have you had the opportunity to review
21 this paragraph, paragraph three of the plea agreement with
22 Mr. Gaddy?

23 A. Yes.

24 Q. In doing so do you agree that you committed those
25 acts alleged in paragraph three giving rise to the crime

1 in which you are charged, sir? You committed those acts,
2 would you agree?

3 A. Yes.

4 Q. Okay. Now, you understand by pleading guilty in
5 this case, if you pick up any charges in the future, this
6 case can be used against you; do you understand that, Mr.
7 Huang?

8 A. Yes.

9 Q. Do you understand that, Mr. Qi?

10 A. Yes.

11 Q. Okay. My understand -- also you understand I
12 think I know the answer, but Mr. Huang, are you a US
13 citizen?

14 A. No.

15 Q. Mr. Qi, are you a US citizen, sir?

16 A. No.

17 Q. Now, you understand that this plea may result in
18 deportation from the United States or exclusion from the
19 mission to the United States and/or a denial of
20 naturalization; do you understand that, Mr. Huang?

21 A. Yes, I do.

22 Q. Mr. Qi?

23 A. Yes.

24 Q. Knowing that, you still wish to plead guilty?

25 A. (By Mr. Huang) Yes.

1 A. (By Mr. Qi) Yes.

2 Q. Okay. Now, have you understood everything about
3 this proceeding, Mr. Huang?

4 A. Yes.

5 Q. Mr. Qi?

6 A. Yes.

7 Q. Do you have any questions of the Court or any
8 questions of Counsel, Mr. Huang?

9 A. No.

10 Q. Mr. Qi?

11 A. No.

12 Q. Okay. Well, how do you plead to the charges, Mr.
13 Huang?

14 A. I plead guilty. I accept the agreement, and I
15 will accept the sentence from the Court.

16 Q. Okay. Thank you. And also, Mr. Qi, how do you
17 plead to this?

18 A. I plead guilty to the charges. And accept the
19 sentence.

20 Q. All right. And Mr. Huang, you want this Court to
21 accept your plea of guilty; is that correct?

22 A. Yes.

23 Q. And Mr. Qi, you want this Court to accept your
24 plea of guilty, correct?

25 A. Yes.

1 Q. And you are pleading guilty for no other reason
2 but for the fact that you are guilty; is that correct, Mr.
3 Huang?

4 A. Yes.

5 Q. Is that correct, Mr. Qi?

6 A. Yes.

7 Q. Okay. Is there anything the parties want to
8 bring before the Court and make some findings, anything to
9 the Court?

10 MR. CASEY: I believe one other matter
11 to be covered is the matter of forfeiture with regard to
12 Mr. Huang?

13 THE COURT: Okay. Did I not bring that
14 up on Mr. Huang? And I think that was Mr. Qi. I think I
15 brought it up with Mr. Huang in terms of the plea
16 agreement but -- and I appreciate it. I don't think I did
17 so with Mr. Qi. But let me just cover it with both.

18 BY THE COURT:

19 Q. You do recognize as part of this plea agreement
20 that you are to forfeit the property that would identify
21 the allegation of forfeiture; do you understand, that Mr.
22 Huang?

23 A. Yes.

24 Q. And you understand that also, Mr. Qi?

25 A. Yes.

1 THE COURT: Okay. Is there anything
2 else?

3 MR. CASEY: Not from the United States,
4 Your Honor.

5 THE COURT: Anything from Counsel before
6 I make my findings?

7

8 MR. GADDY: No, Your Honor.

Further, the Court will find there is no probable cause to believe you have been inadequately or ineffectively represented by counsel.

At this time and the Court is open to suggestions. I want to make sure we keep the parties -- prior to this hearing the parties talked to the Court. There were presentence investigations that were already prepared. And if there is nothing further with regards to

1 the plea, it is the Court's intent to move to the
2 sentencing phase at this time.

3 Let me ask Counsel, I know -- let me start with
4 Mr. Hobbs. You have had the opportunity to see the
5 presentence investigation report?

6 MR. HOBBS: Yes.

7 THE COURT: And you have had the
8 opportunity to go over that report with Mr. Huang; is that
9 correct?

10 MR. HOBBS: Yes. If I could Judge, just
11 add and for the record at the appropriate time we will
12 amplify our comments regarding the objection to the amount
13 of loss that is reflected in various paragraphs. That is
14 the only guideline objection and at the appropriate time
15 we're prepared to make further argument in aid of
16 sentencing following the Court's determination as to what
17 the guideline loss is.

18 We are certainly willing to do that after Mr.
19 Qi's sentencing if the Court wants to proceed with Mr. Qi
20 first.

21 THE COURT: And that was a question I
22 had, I know there was an issue with respect to -- and I
23 think we talked about it prior to coming out here Mr.
24 Gaddy, with regard to what the government may have
25 requested in terms of the amount of loss. And then that

1 changing significantly.

2 I know there is a binding agreement with respect
3 to the sentencing with your client. Did you want to
4 address in anyway -- I don't know if it is necessary
5 because, because the actual total offense level reflected
6 notwithstanding the fact that the Court is going to rule,
7 still is showing a 20 -- do you have any objection to the
8 presentence investigation report? Let me start there.

9 MR. GADDY: Judge, first of all, we have
10 received a copy of the presentence investigation report.
11 I have reviewed it with Mr. Qi on several occasions. We
12 did lodge an objection to amount of loss. I don't believe
13 at this time if the Court is inclined to accept the
14 binding plea, we need to litigate the amount of loss on
15 behalf of Mr. Qi. I made that objection to be out of an
16 abundance of caution. If the Court would reject the
17 binding plea then we would be in a situation where we
18 would be litigating that issue with Mr. Huang and Mr.
19 Hobbs.

20 THE COURT: Right. Okay. And I was
21 just doublechecking for the Court's perspective. It is
22 the Court's intent and I believe I stated to accept the
23 binding plea between the parties. Can I have Counsel
24 approach for a moment?

25 (THEREUPON; Counsel approached the bench and the
29

Denise C. Halasey, CCR No. 1257
Certified Court Reporter

1 following proceedings were held.)

2 THE COURT: I guess my only question is
3 and for the purpose of the record, arguably you have, you
4 know, binding, you know, the same plea agreement. My
5 question is in terms of offense level of criminal
6 categories, I still think I need to make a record of that.
7 Although we have binding just like I am doing there. I
8 want to get your guys take. This is my first time
9 experiencing this so. It would seem to me that I still
10 would need to make my record with regard to offense level.
11 Now, I know you objected and you may not want to argue
12 that, but then I'm going to find the offense level what it
13 is. Do you understand what I'm saying? Or are there any
14 suggestions?

15 MR. HOBBS: If it would help, Judge, I
16 think under pure guideline practice you are correct.

17 THE COURT: Yeah.

18 MR. HOBBS: If it would help we are
19 prepared to go first and then have Mr. Gaddy add any
20 additional comments, and have you make the finding.

21 THE COURT: Yeah. And I'm open to that.
22 I understand what you were trying to do and have them go
23 first, but it still would seem to me despite that, the
24 fact that I know he is going to do time served and that.
25 I still have to make some type of finding with regard to

1 that.

2 MR. CASEY: In the alternative, Your
3 Honor, we would agree to just stipulate to, you know, the
4 amount of loss for the purposes of Mr. Qi, and then allow
5 you to make the finding and apply the offense level. If
6 Mr. Gaddy would, it would probably move us a long quicker.

7 THE COURT: You guys tell me. Do you
8 want to --

9 MR. GADDY: Judge to try to save time I
10 was prepared to withdraw our objection, and just accept a
11 ruling. But I understand what the Court is saying is you
12 may want to revisit that after Mr. Hobbs' presentation.

13 THE COURT: Well, what I am saying is
14 this, if in fact I do what you want me to do, and I am, I
15 accept that. I still have to make some finding with
16 regard to offense level. Now, if you withdraw that then
17 I'll make my finding as it is. The question is do you
18 want to argue against that? You know, making an offense
19 level 27, category one, which is my guideline, 70-87.
20 Now, I know what I'm going to do but --

21 MR. GADDY: Dilemma, dilemma.

22 THE COURT: That is my question, I mean,
23 obviously after arguments are made with regard to
24 sentencing -- it would seem to me it would be more
25 consistent what my finding would be, would be my finding

1 for your client as well as Mr. Huang. Because if you guys
2 stipulated to a certain amount than it would seem
3 inconsistent from the government.

4 MR. GADDY: Judge, I couldn't agree with
5 you more. I would just alert the Court that Mr. Hobbs is
6 going to carry the burden if you will on that. I probably
7 will have very few comments or argument in light of the
8 Court's tentative ruling on the binding plea.

9 THE COURT: Yeah.

10 MR. GADDY: And that makes the most
11 sense.

12 THE COURT: If you want you can make a
13 record to adopt his argument.

14 MR. GADDY: Yeah.

15 THE COURT: You know, you don't have to
16 say a word.

17 MR. GADDY: Yeah. I think that is
18 probably the easiest.

19 THE COURT: I just think that makes this
20 more consistent as opposed to me making kind of these
21 different findings. So we will do that and go from there.

22 MR. GADDY: I agree, Judge.

23 THE COURT: All right. Thank you.

24 (THEREUPON; The proceedings returned to open Court.)

25 THE COURT: Well, it's the Court's --
32

1 and I know, Mr. Hobbs, you already indicated you have,
2 there is an objection also with regard to the amount of
3 loss. And you want to make at least a presentation
4 argument to the Court on what you believe the amount of
5 loss should be that would presumably affect the sentencing
6 guidelines.

7 My understanding is, Mr. Gaddy, you object to
8 the amount of loss that was set forth in the presentence
9 investigation report, is that correct?

10 MR. GADDY: That is correct, Judge.

11 THE COURT: And I know that Mr. Hobbs is
12 going to make the argument for his client, Mr. Huang. I
13 would suspect your arguments may be similar. I will allow
14 you after Mr. Hobbs has completed, if you want to add
15 anything additional you can do so. If you want to adopt
16 his argument for the Court, then I think that is
17 appropriate too in the Court's estimation.

18 MR. GADDY: We agree with that, Judge.

19 THE COURT: Okay. With that said I
20 think, Mr. Hobbs, this would be the appropriate time for
21 the Court to entertain argument from your position and the
22 government's position with respect to loss which would
23 affect the guideline range.

24 MR. HOBBS: Thank you, Judge.

25 THE COURT: Now, we can do this several
33

1 ways. I don't necessarily -- if you want your clients can
2 have a seat at this time and you can present your
3 argument. However you see fit.

4 MR. HOBBS: Thank you, Judge, for your
5 courtesies. For the record Mr. Huang objects to paragraph
6 76 in the presentence report to the level of enhancement
7 for a lawsuit \$2200 to \$400 million. If you turn Judge to
8 the PSR, Ms. Hille has also indicated the parallel
9 recitations in the addendum. That is to say paragraph 71,
10 76, 80, 84, 106, 115 are all related to the amount of loss
11 so we object to this paragraph.

12 THE COURT: Thank you. Okay.

13 MR. HOBBS: And also, Judge, in aid in
14 this argument as the Court knows the parties have filed a
15 sentencing memorandum. And I've discussed with the
16 Counsel from the government that the parties could freely
17 refer to the exhibits. I do have courtesy copies of those
18 exhibits that I have tendered to the Court at this time.
19 I have marked as Exhibit 1 those references and the
20 discovery that Mr. Huang's continues to support his
21 decision regarding the loss. I've also referenced Exhibit
22 2 which is a letter given on behalf of his group and his
23 deposition regarding loss. And this morning I've
24 discussed with Mr. Casey also joined the Court's attention
25 to what I've just marked as Exhibit 3, and I'll explain

1 that in just a moment, is a memorandum of the interview.

2 And so at this time for purposes of this hearing, I'd
3 offer Exhibits 1, 2, and 3.

4 THE COURT: Okay. Any objection?

5 MR. CASEY: No objection, Your Honor.

6 THE COURT: Defense Exhibits 1, 2, and 3
7 will be admitted.

8 (THEREUPON, Defense Exhibits 1, 2, and 3 were
9 entered into evidence by the Court.)

10 MR. HOBBS: And I think it's clear,
11 Judge, that I have rebuttal of Mr. Casey what's referred
12 to Exhibits that he has tendered from the discovery
13 procedurally Mr. Huang has no objection to that.

14 Judge, first, I think it is important to note
15 that there is no disagreement that this case did not
16 result in an actual loss. It was a product based sting
17 operation, there was no actual harm to Pittsburgh Corning.
18 That is important because under guidelines one first looks
19 as to whether there is an ascertainable actual loss. That
20 is not disputed.

21 And then the second issue than becomes what is
22 the intended loss for guideline purposes. And we have
23 advanced in the sentencing memorandum the argument that
24 Mr. Huang did not intend to cause a significant actual
25 loss to Pittsburgh Corning. I would note that one of the

1 elements of the trade secrets defense which he plead
2 guilty is a representation that his acts were knowing that
3 an injury would occur. Our guideline argument is a little
4 more nuanced than that, in this sense, while his actions
5 involved and knowledge that some injury would've occurred
6 to Pittsburgh Corning, that is far different than
7 admitting for guideline purpose that he was intending to
8 cause a significant loss, certainly in the realm of \$260
9 million dollars.

10 The range that is before the Court would include
11 the Court's consideration as to whether the loss was
12 negligible or in the alternative no more than a \$100,000
13 dollars or in the alternative somewhere near the \$20
14 million dollar range or in the alternative \$260 million
15 dollars. The reason I deposit that to the Court is to
16 amplify the sentencing memorandum.

17 As Mr. Huang, we believe, had an intention of
18 getting information that would allow him to develop an
19 opportunity in Ningbo, China to use FOAMGLAS for commercial
20 buildings. We believe that the record before the Court
21 and in the sentencing memorandum shows that Pittsburgh
22 Corning was not in business in China. They were not in
23 business in Ningbo, China, and they were not in the
24 commercial building business. Instead, as the PSR points
25 out, in fact in paragraph 10, Pittsburgh Corning customers

1 were energy companies, Petro chemical companies, natural
2 gas facilities involved in piping, tubing, other types of
3 the use of the product.

4 And that is one of the reasons we suggest that
5 the Court could well find that the injury to Pittsburgh
6 Corning is negligible.

7 Now, what is telling about that, Judge, if you
8 look at the indications of the sentencing memorandum is
9 the series of quotations that we have made from the
10 discovery. And one of the reasons that is important, is
11 this was, as the Court knows, a product of a sting
12 operation. One of the duties of a sting operation is that
13 the defendants are unaware that they are being recorded.
14 They are unaware that they are being audio recorded or
15 video recording. The concept is that if you are unaware
16 you are being recorded your answers are more likely than
17 not to be a true reflection of what you are thinking.
18 Obviously, we see that in drug cases all the time. You
19 talk to somebody to get an indication of whether that was
20 their intent. We have cited throughout the sentencing
21 memorandum the examples, Judge, of where Mr. Huang, had
22 professed not knowing that he was being recorded that he
23 was not trying to drive Pittsburgh Corning out of
24 business. In fact, he was not trying to compete with
25 Pittsburgh Corning in the United States. He had a narrow

1 vision or a narrow remark, and that is without getting
2 into a lot of detail. Exhibit 1 has the references in
3 that regard. There are suggestions, for example, aren't
4 you going to hurt Pittsburgh Corning? He replied, no, my
5 intent, my belief is that were going to start an
6 opportunity that would be in a completely different
7 market, both geographically and with respect to the form
8 of the product. In fact, one of the quotes says, I want
9 to do a different form.

10 So you know, it's interesting, what would the
11 government's argument be had Mr. Huang said he didn't know
12 he was being recorded? Well, sure, I'm going to drive
13 them out of business, I'm going to eradicate them, I'm
14 going to eliminate them. Their argument would be, well,
15 the admissions and the undisclosed shows true intent. We
16 suggests the same is true to the contrary. That when he
17 is saying what his narrow purpose would be, the Court
18 would be well within it's rights to determine that
19 purpose.

20 Now, alternatively, Judge, we would point out
21 that it is undisputed that Mr. Huang paid \$25 000 dollars
22 for the employee from Pittsburgh Corning with a promise to
23 pay an additional \$75,000 dollars to come and help him
24 develop this product in Ningbo for the use of commercial
25 property. So there is an alternative argument that the

1 gain that he had or the true vision of loss might be the
2 amount of money that was appropriated. That is
3 significant because if the Court adopted that range after
4 an acceptance of plea of guilty, then that range would be
5 ten to 16 months as opposed to the more significant ranges
6 suggested by the government.

7 The third alternative is if the government
8 suggests is the \$7 to \$20 million dollar range. And they
9 suggest that there was a representation of Mr. Huang was
10 going to invest that much to develop this opportunity and
11 perhaps that is the measure of loss.

12 And then finally, Pittsburgh Corning itself
13 suggests a much greater figure than even the parties whom
14 nearly suggested by suggesting \$260 million dollars. So
15 let me speak about that as well.

16 The argument that before the Court with respect
17 to the \$260 million dollar loss, Judge, is primarily
18 grounded in this Exhibit 2. I'd like to talk about No. 2
19 for just a moment. Let me give you a courtesy copy of
20 Exhibits 1 and 2, Judge.

21 THE COURT: Thank you.

22 MR. HOBBS: Exhibit 2 is the so called
23 victim impact letter. And for the record we have no
24 objection to the Court considering this. I talked to Mr.
25 Casey by trying to make the hearing effective or efficient

1 and certainly even in determination of an issue as
2 significant as this, as long as the information is
3 reliable, the Court can do that.

4 Our suggestion is that when one looks at the
5 letter it's not persuasive as horrendous loss of \$260
6 million dollars. For example, paragraph two, page one of
7 the letter, speaks in terms of potential loss. Paragraph
8 two, page one, says the current fair market value of the
9 company is \$267 to \$272 million dollars. Paragraph two,
10 page one, says it would allow others to perfect cellular
11 glass manufacturing. Paragraph three, page one of the
12 letter, says in Pittsburgh's Corning belief that it would
13 result in a complete loss of the goodwill value of
14 Pittsburgh's Corning. Paragraph four, page one, says it
15 would deplete the entire value of the company. Paragraph
16 four, page one, Pittsburgh's Corning says it has a
17 trademark registration in 55 countries, and sales are made
18 in over 90 countries. But Pittsburgh is obviously assuming
19 that it was Mr. Huang's intention. Paragraph seven,
20 speaks to guilt, we are professing not guilty, the Court
21 just heard that. Paragraph two, page two, Pittsburgh
22 admits it's only a United States producer. Paragraph
23 three, page three, of this letter says competitors have
24 emerged, yet Pittsburgh Corning still continues to
25 flourish. Paragraph one, page four of the letter, says

1 that thirty percent of the sales is in the Asia-Pacific
2 region. This is a telling admission because there is no
3 mention of China, there is no in Ningbo, China, and there's
4 no mention of the commercial building market.

5 In addition, Judge, we have marked what has been
6 marked as Exhibit 3. And I think it is interesting that
7 when another representative who had been interviewed about
8 the before the value of the company, the figure of a \$150
9 to \$200 million was used. I only have one copy of this
10 and I will show this to Mr. Casey.

11 THE COURT: Okay.

12 MR. HOBBS: Exhibit 3. The point being
13 that it is our respectful position that this letter is a
14 speculation, pure speculation. They also note, for
15 example, that there is these competitors, yet the
16 discovery is complete with other competitors. There is a
17 group called Zhen Shen, that's Z-H-E-N-S-H-E-N. And yet
18 that competitor has not eradicated or eliminated the
19 ability for Pittsburgh Corning to sell it's product.

20 Additionally, Judge, in the discovery we have
21 noted that there is confirmation that Pittsburgh Corning
22 tried to build a factory in China, but they were not
23 allowed to do that. They suggest that their Asian market
24 is 30 percent and that therefore this figure can be
25 justified, but we argued even that percentage should be

1 reduced further because we wanted a more local Chinese
2 market.

3 There is also reference to the discovery that
4 they wanted to go to China at most because there is a
5 representation that Pittsburgh Corning had acknowledge of
6 the existence of over 10,000 liquefied natural gas plants.
7 So there is actually no mention at all of using this
8 FOAMGLAS insulation in a context of commercial buildings
9 or high rise buildings.

10 Now, why is this important? Because the law on
11 intended loss is what Mr. Huang thought. What did he
12 think? It is A subjective analysis. Now, the
13 government's reply appropriately points out that in
14 fashion loss one can look at research and development. We
15 have no quarrel with that observation. But the point is
16 on an intended loss case, it's the defendant's state of
17 mind that drives what the vision of loss should be. And
18 how do we know that? Well, one of the leading cases on
19 intended loss is the United States versus Wells. Which
20 has an interesting history in this District because this
21 case went to the United States Supreme Court and now
22 Whitworth is on the other side of it. And after the
23 remand by the United States Supreme Court on another
24 issue, when it came for sentencing, this is a reported
25 opinion here, 127 Fed 3739, the case that and that Mr.

1 Gaddy and well as others from our firm litigated. It says
2 that the government claims that intended loss as used in
3 2F1, which at the time is the equivalent of 2B1 isn't
4 injured by the potential loss or possible loss that could
5 rise in the charged crime. Not by the amount of loss the
6 defendant intended to cause. Under this the intended loss
7 is shorthand for a possible loss that could have resulted.
8 He goes on to point out that is not -- if the Court
9 determines that the defendant intends to seek the full
10 extent of the fraud, there is no doubt this defendant
11 intended to cause less than the greatest possible loss,
12 that's what the Court should look at. The Court should
13 look at what the defendant subjectively wanted to achieve.

14 We also noted that, again, what we have no
15 argument with this procedure in Court taken any proffer of
16 the two. In the case called United States versus Rivers,
17 the Court should look strongly when the evidence is
18 supportive of guideline loss is the victim's own
19 representations. And, of course, we pointed out that at
20 least on one occasion they were arguably and persisted in
21 nature to the same question. And that is the United
22 States versus Rivers. I've got a copy of this since I
23 didn't put that in the sentencing memorandum.

24 Now, we are not suggesting that what happened
25 was appropriate behavior. And that is why Mr. Huang has

1 plead guilty. And we are well aware of the elements and
2 that some injury is the element of the offense. But
3 Mr. Huang did not intend to cause a catastrophic measure
4 of loss that Pittsburgh Corning -- and we suggest even the
5 \$20 million dollar figure by the government suggests.
6 I've given this analogy, and there may be better
7 analogies. But it is sort of like John DeLorean's trading
8 Delorean Motor car. It was General Motors. And I suppose
9 that General Motors would argue, well, he is going to
10 drive us out of business. That wasn't his intent. His
11 intent was to set up a rival product. It turned out to be
12 fatal.

13 The other thing that is interesting about
14 Pittsburgh Corning is that there is no rare condition that
15 in order to adequately compete and totally devalue the
16 company, he'd have to have a startup company, he'd have
17 costs, employees. His business, Judge, is one of
18 promotional products, there toys, there foam balls, and
19 other products that you see at Bench Bar, and other places
20 where they give out promotional products. He wasn't
21 geared up to suggest that he would go and knock down
22 Pittsburgh Corning. \$260 million dollars I think is just
23 too speculative to be persuasive. So we would ask that
24 the Court find that the loss is negligible or in the
25 alternative no more than a \$100,000.00 dollars. I have

1 authorities and citations in the order that I feel is
2 effective, but I will finish in a timely fashion so that
3 completes the argument at this time.

4 THE COURT: Thank you, Mr. Hobbs. Let
5 me ask, Mr. Gaddy, is there anything additional that you
6 want to add to that argument with respect to loss?

7 MR. GADDY: Just a brief comment, Judge.
8 First of all, I would with leave of Court adopt Mr. Hobbs
9 arguments and authorities that he shared with you today.

10 THE COURT: Okay.

11 MR. GADDY: One distinction I think
12 needs to be made with respect to Mr. Qi is as follows. He
13 was an employee in the promotional company that made
14 squeeze ball, polyurethane toys, and doors. In our
15 objection to the PSR we note that Mr. Qi was not involved
16 in designing this separate new factory on FOAMGLAS. He
17 was not involved in the initial contacts with Pittsburgh
18 Corning. He was not involved with the facts noted in the
19 PSR about some folks traveling to the Sedalia factory to
20 take a tour of it. He was not involved in the e-mails
21 with the undercover Sedalia employee. He was not involved
22 in advertising for a position in Sedalia, Missouri
23 newspaper for a Pittsburgh Corning consultant. Mr. Qi was
24 tapped, if you will, to come to Kansas City in late August
25 or early September of 2012 by Mr. Huang to serve as a

1 translator. As a matter of fact, on that trip in Sedalia
2 and in the discovery and in the presentence report they
3 had other business. They visited some door vendors in
4 Kansas City.

5 Mr. Qi, of course, was at the dinner meeting
6 that brings us all here. He has accepted responsibility
7 for being a part of that meeting. He knows what they did
8 was wrong in trying to acquire documents that did not
9 belong to them. But what is ironic and interesting to me
10 is because Mr. Qi did not know anything about FOAMGLAS or
11 insulation, that wasn't his field. He had no clue who
12 Pittsburgh Corning was. He had no clue whether the effort
13 would be successful or not. And he had no clue what their
14 market share was, whether they were in China, what
15 products they made. I think in this case when you go
16 through all the comments that Mr. Hobbs shared that were
17 made by Mr. Huang, Mr. Huang repeatedly on the tape and
18 during his FBI interview repeatedly says, I'm not
19 competing with Pittsburgh Corning, I'm going to be in
20 China, I'm going to be putting insulation into commercial
21 buildings, they're in factories. I think that not only is
22 that important in Mr. Huang's case, but it's very
23 important in Mr. Qi's case. That is his boss. He is
24 translating those words. He's relying on those words that
25 Mr. Huang is saying that we are going to do something

1 different.

2 So those are the only additional comments I
3 would have on behalf of Mr. Qi. I do think when you look
4 at his limited role and lack of knowledge of the whole
5 business, his intent, and his heart was his boss was
6 telling him that we are not going to compete with
7 Pittsburgh Corning. So I think there is grounds in Mr.
8 Qi's case that there can be negligible loss as well.

9 Thank you, Judge.

10 THE COURT: Thank you. Mr. Casey.

11 MR. CASEY: Judge, in an initial matter
12 the United States has filed the sentencing memorandum in
13 this case. We attach those exhibits under seal. We offer
14 those to the Court for consideration at this time.

15 THE COURT: Okay. They will be accepted
16 for purposes of this hearing.

17 (THEREUPON; the Court accepted exhibits under
18 seal by the government for purposes of the hearing.)

19 MR. CASEY: Your Honor, the sentencing
20 memorandum is in considerable detail, and we are resting
21 largely on that in our position. So I will try to keep my
22 comments fairly brief.

23 This is an intellectual property offense. It is
24 not a typical theft offense where you can say, well, here
25 is the item, and it is worth this much, and that is what

1 the intended loss is. It is not a typical fraud offense
2 where, for example, mortgage fraud and there is a house
3 that has a certain value. What we are trying to do here
4 to account for this loss is value intellectual property.
5 You know, by nature it is a difficult thing but it is not
6 an impossible thing. There are different ways to do it.

7 The guidelines explicitly provide one way to do
8 it. You know, in the guideline comments it says, in a
9 theft and trade secret case we have to narrow it. In this
10 particular type of case so where as Mr. Hobbs has larger
11 argued general rules. Let's look at the particular rule.
12 The particular rule says if it's a trade secret case we
13 should look at the loss of value of that trade secret to
14 the company or you should look at the cost that the
15 company expended in producing that trade secret.

16 So I think that is where we begin with. And
17 that is where you have the company's letter they referred
18 to it. You know, it's also the company's victim impact
19 statement, it goes through different loss calculations.
20 And the company does begin with by saying, okay, let's
21 look at the loss of this information, and what it means is
22 the loss of our proprietor use of this information. The
23 trade secrets, and harm in the theft of trade secrets is
24 that the company spent it's time researching, it's time
25 developing, it's time making it's on infrastructure, sale

1 structure, it's time basing this entire company's
2 structure over information it developed for it's own use.
3 It protects that information that it basis it's business
4 on.

5 The harm here and the intended harm, the statute
6 requires that the intended harm, that there is intended
7 harm, the intended harm is to use the information that you
8 are not entitled to use. Is to misappropriate that
9 information, that intellectual property for your own use.

10 When looking at what that means the company.
11 When Pittsburgh Corning says in their letter, you know,
12 they explain they are a very unique company. And I think
13 this is one of the sort of the more interesting parts of
14 this case. I analogies sometimes it's like the old torts
15 case where you have the eggshell victim. In this case,
16 the crime was so targeted and I think that goes to some of
17 the intent here. The crime was so targeted that kind of
18 took Pittsburgh Corning and attacked them at their most
19 vulnerable spot.

20 Their ability to make a product better than
21 anyone else. They made one profitable product called
22 FOAMGLAS insulation. And they are the market leader, they
23 are the market leader because they make it with properties
24 that no one else can make that type of installation with.
25 They make it lighter, it has better heat resistant

1 properties. It is what keeps them in business. They are
2 largely US-based manufacturing. And what keeps them in
3 business is their product is superior. Mr. Huang was
4 trying to purchase the trade secrets that allowed everyone
5 in the field to make the product, everyone in the field
6 can make it at a certain level. He wanted the specific
7 secrets the specific formula and manufacturing processes
8 to make it as well as Pittsburgh Corning. Pittsburgh
9 Corning's letter says we are a company worth greater than
10 \$200 million dollars and we are largely worth it only
11 because we make FOAMGLAS, we make glass insulation better
12 than anyone else.

13 The point here is that Mr. Huang was exploiting
14 that intellectual property, that ability to make it better
15 for his own use. And Pittsburgh Corning's claim about it
16 being a total evaluation of the company comes from the
17 fact of if it gets out how to make it as well as we do,
18 and if these other companies can make it more cheaply or
19 can compete in foreign countries, then we won't be able to
20 compete in the market place. And that is their basis
21 behind their statement. Once the information is out, then
22 ultimately since we no longer have the proprietary use,
23 the sole use of our trade secrets, that information comes
24 out, then we couldn't compete with us on other levels of
25 cost and distribution and things like that.

1 All of that said, you know, there is some reason
2 to think \$200 million is a very large loss number. And
3 for that reason the letter also goes into more tangible,
4 some more concrete numbers that the United States thinks
5 the Court should consider.

6 That same guideline rule says not only is it the
7 loss and value of the company of the trade secret.
8 Pittsburgh Corning says well, the trade secret becomes
9 useless to us if everyone else knows how to do it, and our
10 company becomes worthless. But it is also the amount of
11 costs to create a trade secret, to protect it, the
12 investment in to that trade secret. And the letter lays
13 out different research and development expenditures, some
14 different capital expenditures, and some different
15 security expenditures, that Pittsburgh Corning recently
16 made with regard to FOAMGLAS and the recent developments
17 of FOAMGLAS that allow them to have those high-quality
18 products. And those are fairly concrete numbers. Those
19 are the things that you can just add up to get a better
20 handle. And if you add those up you can see the
21 \$7 million dollar threshold for the guidelines. And
22 that's why the United States is submitting giving sort of
23 the concreteness of that calculation, that that is a
24 minimal amount of loss that the Court should consider
25 here. That loss of or sort of the sub-cost that

1 Pittsburgh Corning went into to develop their trade
2 secrets, their intellectual property, on how to make this
3 type of insulation better for everybody else.

4 That gives you a little more concrete number,
5 but I think more importantly that number would be is a
6 fairly reasonable foreseeable number. And here's where I
7 think our primary disagreement with Mr. Hobbs position
8 comes in. He says, well, Your Honor, you looking at a
9 case about intended loss, and you need to crawl inside my
10 client's head and look at his specific intended loss. The
11 exactly -- the dollar figure he intended to be the loss
12 there. And I don't think you read the cases, many of the
13 cases he cites are on an entirely different factual
14 scenario. They are largely a series of mortgage fraud
15 cases and the question becomes whether or not you subtract
16 the collateral that's left over after the inflated
17 mortgage. That is a very concrete, very concrete kind of
18 none intellectual, you know, real property fraud. And it
19 just doesn't really analogize when we're talking about
20 intent. It doesn't really analogize here this
21 intellectual property crime. To better analogy is what
22 was the harm that was intended? And what could be
23 reasonably foreseen as the consequences of that harm? And
24 that's also -- the same cases he cites also say that as
25 the general principle.

1 And looking at it from that perspective because
2 the harm that is intended here is to deny Pittsburgh
3 Corning their exclusive franchise, their exclusive rights
4 to this information. And the harm and the most reasonable
5 foreseeable from that harm well, statements like, that
6 just makes their research and development costs,
7 sub-costs, that they get no benefit from. That just makes
8 their security procedures to protect sub-costs, that they
9 get no benefit.

10 And a sophisticated businessmen like Mr. Huang
11 who has a very successful business in China, a successful
12 businessman would know that. He would foresee, he would
13 be able to foresee and understand if I steal their secrets
14 then they just lost the money they wasted on developing
15 the secrets. In fact, the whole point in stealing the
16 secrets is that he doesn't have to spend the money to
17 research and development.

18 And so I think looking at that sort of
19 \$7 million-dollar loss figure that the company spent for
20 the research and development costs gives the Court the
21 most concrete loss were you can also very easily see how
22 it would count as intended loss given the harm that Mr.
23 Huang has admitted to intending already today.

24 There's an alternative, Mr. Hobbs pointed out
25 that sometimes when you can't correct the value of loss

1 you look at the intended gain of that defendant. And a
2 lot of that is correct and if the Court finds that
3 appropriate to do here, Mr. Hobbs number in that regard to
4 \$100 thousand we really couldn't disagree with more.

5 Mr. Huang, the evidence shows some of the
6 exhibits we have shows, the evidence would show that Mr.
7 Huang was in the process of putting a \$20 million dollar
8 capital investment in producing a factory that would make
9 FOAMGLAS based on the Pittsburgh Corning's manufacturing
10 process and formula. You do not place a \$20 million
11 dollar capital investment on something that you think is
12 worth a \$100 thousand dollars. You think it's worth more
13 than \$20 million dollars because that's the information
14 that's going to allow you to not only recruit your
15 investment, but to make you your profits.

16 Mr. Huang, I think the evidence shows that he
17 clearly valued this as extremely valuable information
18 because he stated with his own admission to start a 50,000
19 square meter factory with another 50,000 square meters to
20 be built soon thereafter. These are enormous capital
21 investments. It's not something he thought was a
22 \$100,000.00 dollars. And the \$100,000.00 dollars number
23 just wouldn't hold up because the guidelines will say
24 well, you can look at in a theft case you can look at fair
25 market value of the things that were stolen, but that

1 \$100,000.00 dollars is not the fair market value of these
2 secrets. This is contraband, this is contraband
3 intellectual property. He's trying to steal something and
4 so he's trying to get what the black market would bare,
5 not what the fair market would bare. The fair market
6 would bare much more, much greater over \$20 million
7 dollars we submit just to learn these processes. So the
8 \$100,000.00 dollars just doesn't hold up. You should look
9 at what Mr. Huang intended to benefit from. And we submit
10 that that is greater than \$20 million dollars.

11 I think it is important also to try to calculate
12 the loss of the guidelines. There is a lot of tendency to
13 look at some of these numbers which are enormous. To say
14 well, the crime wasn't that bad. I think the intended
15 crime had it completed, in fact, would've been that bad.
16 And that is what we are looking at. What is the loss that
17 he intended this harm and what would he had foreseen? He
18 could have foreseen multi-million dollar losses to
19 Pittsburgh Corning.

20 And the last comment I want to make with regard
21 to the claim of competition. One thing that is in the
22 Pittsburgh Corning's letter is that the glass insulation
23 it is a fungible product. Once you can make it, once you
24 can make it a certain quality, you can make it for multi
25 purposes. Mr. Huang statement that he was only going to

1 make it for building purposes in one area just doesn't
2 stand the common sense test of business. Businessman can
3 make a product, sell it at higher profits and sell it at
4 different places, he will. And his self-serving
5 statements at a dinner meeting where he is trying to
6 convince an employee of the company to steal secrets for
7 him, just as Mr. Hobbs has suggested the credibility for
8 the companies own representation. I think the Court needs
9 to take those factors into consideration too. Where as,
10 yes, he didn't know he was being recorded, but he was
11 trying to get someone to steal for him. And that is also
12 context in which you are not particular going to be honest
13 and say what the person wants to hear. Well, the employee
14 of Pittsburgh Corning, the stealing at Pittsburgh Corning
15 who said I'm worried he's going to put us out of business.
16 What he would like to hear is to say, no, we are not going
17 to put you out of business. And that's where the context
18 of that conversation comes in. And that's why they don't
19 want to tell us anymore about Mr. Huang's intent. Their
20 not special mirror into Mr. Huang's intent as Mr. Hobbs
21 has suggested that they are. Instead, his crime is a
22 mirror of what his intent was. His intent was to deny
23 Pittsburgh Corning their rightful use to their own
24 intellectual property.

25 THE COURT: Thank you. Mr. Hobbs.
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1 MR. HOBBS: It is clear from the
2 exhibits that Pittsburgh undercover employee was trying
3 his best to get admissions to the best of his ability.
4 And in reply to that, we believe the recitations of that
5 show that he was not being self-serving it shows what is
6 truly going through the state of mind. And Wells and
7 other cases say to look at the intended loss, if there is
8 no actual loss.

I'd say, finally, Judge, that perhaps the best illustration of why the loss is not as high as the government suggests is in the various arguments the Court has heard. The guidelines say the fact that 2B1.1.B the Court should use the gain and the result from the defense as an alternative measure of loss only for the loss that can not reasonably be determined.

16 We think on the state of this record and
17 recognize that the government has the burden of proof even
18 by preponderance standard they still have the burden of
19 proof. There is not gain. There was an intended loss,
20 but certainly not the amount the government suggests.

21 And finally, it is true they give examples in
22 determining the loss in a trade secret case you look at
23 the cost of developing information. That's true, it is
24 actual loss. Just know that doesn't undermine the
25 intended loss concept. The United States versus Wells and

1 other authorities don't limit intended loss to bank fraud
2 cases, that is a doctrine that applies to nearly every
3 white-collar case. And best example of his intended loss
4 we think are his words when he is not aware of the
5 listener. He doesn't know anything other than he is
6 trying to commit this offense. That is the best
7 illustration when he was truly intended.

8 THE COURT: Well, then the government
9 proffered other statements where that would run counter to
10 that. You recognize that?

11 MR. HOBBS: Right.

12 THE COURT: So do they nullify each
13 other? And so, I mean, then that leaves you with the rest
14 that is out there.

15 MR. HOBBS: We say that they don't carry
16 the burden of proof.

17 THE COURT: Okay.

18 MR. HOBBS: That's all I have.

19 MR. CASEY: Nothing further from the
20 United States.

21 THE COURT: Okay. Let me take probably
22 a ten minute recess. I want to look at few things and
23 then I will come back out and make a determination.

24 (THEREUPON, a short recess was had;

25 WHEREUPON, the following proceedings were had.)

1 THE COURT: Okay. The Court has come to
2 a determination on what the Court believes based upon the
3 preponderance of the evidence what the Court believes to
4 be the intended loss in this case.

The Court finds that the loss in this particular case would be between \$7 million and \$20 million which would be a 20 level increase. The Court will attempt to explain.

I think the Court looks to the sentencing guidelines. The Court looks to the section that was referenced by Counsel under 2B1.1, the comments of the 3(C)(ii) that in the case of proprietary information the cost of developing that information or the reduction and value of that information that resulted from the offense. And the Court did consider what was presented to the Court and made a determination based upon the cost of the research and the development in the use of this particular product fell within that range.

19 Further, the Court will note and I think that
20 even reasonably foreseeable, and I did find credible with
21 regard to Mr. Huang's comment or his intent that it wasn't
22 the desire to affect Pittsburgh Corning in anyway. That
23 this information would be used in another, for lack of
24 better a word, area, and not the same area to which
25 Corning were using it. I think the proprietary nature of

1 the research and develop goes into this product. And it's
2 clear at least for the Court, from all that was presented
3 and proffered to the Court, that Corning was attempted,
4 maybe not successfully to, start a business in China. I
5 think further whether the area or whether this door
6 business, once you have that sort of trademark or
7 intellectual property, if you don't safeguard it, that
8 very product could come back and harm, you know, the
9 company or some company that holds values operating in the
10 United States. So that argument falls short in his
11 intent. The Court doesn't find credible in that.

12 And I think another good point is that you are
13 investing or prepared to invest capital investment of \$20
14 million dollars into a factory. I don't think it is
15 credible to suggest that you wouldn't attempt to recoup
16 your investment and/or make some future profits. So I
17 don't think subjectively -- I think it is foreseeable that
18 Mr. Huang knew that this could have a devastating effect
19 to this company. And I think he in fact said it in
20 portions of -- at least what the Court has received on the
21 record and what was proffered to the Court as it relates
22 to whether Corning would stay in business or not stay in
23 business, this particular individual who is working with
24 the government could have a job with them. I think it's
25 clear and I don't think his comments made, I think they

1 were self-serving. I think to induce that person to
2 provide with information necessary. It wouldn't shock the
3 Court that he would make these. This is a value or at
4 least in his mind the Court believes someone who has
5 valued with regard to Corning company, worked and was
6 concerned about what he was doing. And Mr. Huang in this
7 Court's opinion would say what is needed to make that
8 person comfortable to part with what Mr. Huang was
9 seeking.

10 With that said, the Court finds in the case of
11 Mr. Huang that the total offense level would be a 23,
12 criminal history category is a one, which would make the
13 sentencing guidelines between 46 and 57 months.

14 With regard to Mr. Qi and his offense level the
15 Court finds is 19, criminal history category a one, and
16 the guideline range would be 30 to 37 months.

17 With that said, it is the Court's intent to take
18 up or impose sentence for your client, Mr. Gaddy, Mr. Qi.

19 Well, pursuant to the plea agreement and the
20 Court accepted the plea agreement, the binding plea
21 agreement of the parties. Is there any good reason why
22 the Court should not impose sentence at this time?

23 MR. GADDY: Nothing, Judge.

24 THE COURT: Okay. Mr. Qi, it is the
25 judgment of the Court that you are, sir, sentenced to time

1 served. There will be no term of supervised release. A
2 \$25,000.00 dollar fine shall be imposed. Further, sir,
3 you are ordered that you shall pay to the United States a
4 special assessment of a \$100.00 dollars which shall be due
5 immediately.

6 Let me ask, Counsel, with respect to the
7 \$20,000.00 dollar fine, could you address that in the plea
8 agreement, was that, Mr. Gaddy?

9 MR. GADDY: Yes, Judge, I'm prepared to
10 address that.

11 THE COURT: Okay.

12 MR. GADDY: First of all the \$100.00
13 dollar special assessment has been paid this morning.
14 I've already seen it.

15 THE COURT: Okay.

16 MR. GADDY: With regard to the
17 \$20,000.00 dollar fine there is a bond, a cash bond that
18 was posted in this case on behalf of Mr. Qi. That bond is
19 in the amount of \$20,000.00 dollars. The clerk's office
20 indicated to me that you could simply order that the cash
21 bond be used to satisfy the fine that has been imposed by
22 the Court. We would note that the cash bond was posted
23 actually by Counsel, Yi Sun on behalf of Mr. Qi. The
24 clerk suggested that we confirm with the parties and with
25 Ms. Sun that there is no objection to the bond amount

1 being used for the fines that she's referenced on the
2 receipt and she is prepared to do that today. I acquired,
3 Judge, whether there is any further paperwork they needed,
4 and they said basically your order that is what they need.

5 THE COURT: Okay. Now, is she here
6 today?

7 MR. GADDY: Yes.

8 MS. SUN: Yes.

9 THE COURT: Oh, okay. Okay.

10 MR. GADDY: She was assisting both
11 defendants prior to Mr. Hobbs and my representation. It
12 is not her property, it was posted on their behalf by her.
13 And she is listed on the receipt.

14 THE COURT: Okay. Well, the Court will
15 find that, and the Court will include in this order that
16 the cash bond be used to satisfy the fine that is imposed
17 in this case if there is no objection?

18 MS. SUN: No, Your Honor.

19 THE COURT: Okay. Further, the Court
20 will find that the order of preliminary forfeiture is now
21 final at this time.

22 MR. GADDY: No objections.

23 THE COURT: Okay. I think ultimately
24 and the Court will make a record with regard to Mr. Qi.

25 The Court accepted the binding plea agreement of
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1 the parties. I think in doing so the Court after
2 conferring with Counsel believes that this plea agreement
3 and the role in which you played, and the time served that
4 the Court has imposed is in compliance with 18 U.S.C.
5 §3553. And I think it meets looking at you and your
6 background. Looking at the crime that you had plead
7 guilty to. Looking at your role in the crime. I think
8 this sentence and the fine imposed and you role reflect
9 the seriousness of the offense. And I think it will
10 forward an adequate deterrence with respect to criminal
11 contact. And I think, I believe it will protect the
12 public in this Court's opinion from further crimes of you,
13 sir.

14 Now, with that said, Mr. Qi, now that the Court
15 has imposed the sentence, you have and the Court advises
16 you of your right to an appeal what I've done here today,
17 sir. And you can appeal this sentence pursuant to 18
18 U.S.C. Section 3742 and subject to any waiver in the plea
19 agreement in this case. You have -- you can loss your
20 right to appeal, sir, if you do not timely file notice of
21 appeal in the District Court pursuant to federal rule and
22 criminal procedure. You have 14 days from entry of
23 judgment to file notice of appeal on your behalf. The
24 Court will let you know the Court will enter judgment as
25 of today's date. If you are unable to pay the cost of

1 appeal, you have the right to apply for leave to appeal in
2 forma pauperis.

3 With that said, is there anything else further
4 for the record as it relates to Mr. Qi?

5 MR. CASEY: That's it for the United
6 States, Your Honor.

7 MR. GADDY: Nothing further, Judge,
8 thank you.

9 THE COURT: Okay. Mr. Hobbs, relative
10 to Mr. Huang, I know you have at least argument to the
11 Court in terms of recommendation.

12 MR. HOBBS: First, Judge, before the
13 Court is the defendant's sentencing memorandum. In aid of
14 that you have already seen some of the exhibits. Also
15 Your Honor, this week we hand delivered to the probation
16 officer background information upon Mr. Huang, about
17 Mr. Huang and I wanted to make reference to that as I make
18 my remarks.

19 I'd first like to make an initial observation,
20 Judge. On behalf of Mr. Huang we very much appreciate the
21 discretion and the professionalism that the United States
22 Attorney's office and the case agents have extended. We
23 understand that they did not have to allow for the range,
24 and they did, and we appreciate that.

25 Having said that, there is strong disagreement,
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1 however, within the range with all due respect. And I'd
2 like to address some of the most important reasons why.

3 First, Judge, if you look at page 23 of the
4 sentencing memorandum. We talk in terms of the
5 immigration consequences and I think that it's appropriate
6 factor for the Court to consider. And I'll note that the
7 Court notes for the record that Mr. Versseld is here, an
8 attorney with expertise in areas of immigration is
9 available if my remarks lead themselves to any questions.

10 At page 23 of the sentencing memorandum we point
11 out that if this Court gives a custody sentence an excess
12 of 12 months, it will put Mr. Huang in a position where he
13 will not be eligible for a bond and will not appear before
14 immigration, Judge, for some time. He'll be placed in an
15 administrative removal proceedings. He will be detained
16 while going through the administrative removal
17 proceedings. And then they will have to make travel
18 arrangements for him to be deported. And it will be
19 deemed an aggravated felony meaning that he will not be
20 entitled to a bond as he is going through that process.
21 So if the Court were to give him custody sentence in an
22 excess of 12 months, that is a direct consequence of what
23 would happen. And that is different than any American
24 citizen because it is likely to lead to substantial
25 incarceration.

1 Now, that is different than the second notion
2 that we cannot escape from which is this is a crime of
3 moral turpitude as it points out on page 24. Unlike an
4 aggravated felony designation, a crime of moral turpitude
5 would put Mr. Huang in a position of being eligible for
6 bond. And he would wait to appear before an immigration
7 judge, and may be eligible departure, much like what was
8 just allowed for Mr. Qi.

9 And so we are asking for the Court to fashion a
10 sentence that would allow this offense to be deemed the
11 kind of moral turpitude, but to avoid the designation of
12 an aggravated felony. Which means by definition we are
13 asking for a sentence of less than 12 months.

14 Specifically we are asking for a supervised
15 release sentence. And should be noted, Judge, That
16 Mr. Huang along with Mr. Qi did approximately nine days in
17 custody at CCA before they were released upon bond. And
18 we are asking that he too get credit for time served, and
19 placed on a term of supervised release for 11 months. The
20 reason we are asking for that would be under the twelve
21 month benchmark. Immigration does not distinguish between
22 probation, supervised release or custody if it is a
23 sentence in excess of twelve months, the aggravated felony
24 designation emerges and that is a great detriment and we
25 believe a detriment that is greater than necessary to

1 achieve the sentencing goals and contrary to U.S.C. §
2 3553(a).

3 In addition, Judge, and perhaps equally
4 compelling, if not more so. Is when I have been referring
5 to as conditions of confinement. If you look at page 29
6 of the sentencing memorandum we try to describe this in
7 some detail. And I have been privileged in my practice to
8 have worked for approximately 25 years of legal assistance
9 sitting beside me and she has great skill in a lot of
10 areas. One of them is contact with the federal prison
11 system. And again, she is here if the Court has any
12 further questions and we have proffered based upon her
13 contact the following.

14 She contacted the Designation and Sentence
15 Computation Center referred to as the DSCC. After being
16 explained that Mr. Huang's offense conduct did not involve
17 matters of national security, we have been informed that
18 Mr. Huang be housed in a low security specialist
19 population privately managed facilities. There are no
20 Mandarin Chinese translators within any federal
21 institutions. DSCC explained that most Chinese inmates
22 are located in the northeast region of the country,
23 interesting enough, in either Ohio or Pennsylvania. He
24 can request translation services over the phone. That is
25 rare and unlikely to make an international call. Further,

1 any letter that he might want to write to his wife or
2 daughter in Chinese would have to be translated in English
3 before it could be mailed and vice versa. And it is
4 possible that despite the best efforts that Mr. Huang is
5 going to be in a very, very precarious situation.

6 Now, I understand that his conduct while in the
7 United States put him in this position. I understand
8 that, Judge. But the effect of that is you basically have
9 someone who is dealing with conditions that are far more
10 severe than any American citizen. And interestingly as we
11 pointed out in Page 29 and 30 even before the guidelines
12 became advisory, conditions of confinement have been
13 deemed a basis to depart on the old term and now dealing
14 with a variance. The case that we cite includes the
15 Francis case which is interesting there because the
16 defendant was housed in a nonfederal facility that was a
17 private facility. And this is where they note, they say
18 the defendant at his hearing had evidence of numbers of
19 specific problems. Some complaints were minor, inadequate
20 commissary, inadequate television while being an inmate,
21 overcrowding, lack of Spanish reading-materials, a problem
22 with visitation. They also pointed out that he couldn't
23 even get basic needs, unsanitary food. They pointed out
24 the risk of physical and psychological problems,
25 specifically physical attacks. And we fear the very same

1 thing can happen to Mr. Huang. An inmate shouldn't be
2 running the facility and the fact is that is what
3 happened. In fact, in most cases the inmates are specific
4 in different facilities so you don't have the need to go
5 to an inmate for a request. And yet, despite what you
6 would think, you would think that there would be
7 correctional facilities here that have correctional
8 officers speaking Mandarin. That's not the situation.
9 And this Court go through the example or the type of thing
10 that we fear Mr. Huang would have to endure. Just the
11 simple thing like asking for sanitary or asking for
12 commissary items or asking to follow a directive and
13 having to be translated through another inmate. Standard
14 of due process almost cruel and usual type punishment
15 issue that doesn't have to happen. It certainly isn't
16 going to happen for Mr. Qi.

17 We believe that Mr. Huang's conduct would allow
18 the Court to put him also on supervised release for an 11
19 month period and monitor. If he violated then you could
20 argue there is no sympathy. You've given him the
21 opportunity. An 11 month supervised release period.

22 THE COURT: Where would Mr. Huang --
23 where would he be? The Court is not understanding so.

24 MR. HOBBS: Sure. He is right now,
25 Judge, he is Lawrence, Kansas.

THE COURT: Okay.

2 MR. HOBBS: And he has been there on
3 home arrest for approximately four months. Then the Court
4 released him from home arrest, and he's no issues in terms
5 of violations. He can remain in Lawrence or he could be
6 transported -- if we had cooperation with the Eastern
7 District to St. Louis. Ms. Sun is located in St. Louis
8 and operates there. There are -- it's an opportunity or I
9 guess you can say during the pendency of this case he has
10 had some visits from certain family friends to Lawrence.
11 And it has worked well. He's come to our office in
12 Lawrence and he was on house arrest without any incident.
13 So we believe that degree of supervision would be
14 sufficient additional penalty under these circumstances.

24 Additionally, Judge we cite in our sentencing
25 memorandum of page 11 the employment departure. Sometimes

1 you don't have that. In the Milikowsky case,
2 M-I-L-I-K-O-W-S-K-Y, and Olbres, O-L-B-R-E-S. Talk about
3 if the sentencing of the defendant might have an adverse
4 impact on others who are not involved in the wrong doing
5 as an employment impact. That is a basis for a departure.
6 And as we have proffered the materials in this Ningbo
7 company that has been operated by Mr. Huang has over ten
8 hundred employees so they do not have the President or the
9 sole of the company available at this time. And
10 hopefully, they won't have to deal with that for eighteen
11 months in custody.

12 Additionally, Judge, I again, have the letters
13 here and I made some reference in chambers. Mr. Huang's
14 father is near death. He was in ICU recently, and he's
15 been released to his home. His father also suffers from
16 Alzheimer's. We have photographs and letters that I know
17 the Court is aware of.

18 One of them that I found very interesting is
19 this letter from an employee who talks about an event that
20 happened with Mr. Huang. She said when something happens
21 to our family, he sent us money, clothes and his love as
22 soon as possible. When the earthquake occurred in Sichuan
23 S-I-C-H-U-A-N, Mr. Huang was the first to give his money
24 to employees of Sichuan and motivated other employees to
25 donate clothing, money and materials to the disaster area.

1 These factors of the 3553(a) factors that go to
2 the defender are certain characteristics that the Court is
3 allowed to consider in terms of fashioning the downward
4 departure. These are heartfelt, they are meaningful and
5 they are things that I think speak to the background of
6 Mr. Huang.

7 THE COURT: Counsel, can I ask you a
8 question?

9 MR. HOBBS: Sure, Judge.

10 THE COURT: And I think it goes back,
11 rather does go back to, I believe, your second argument as
12 it relates to speaking Mandarin and being placed. And you
13 know, the basic needs, you can't get addressed. And I'm
14 trying to look and just have a better understanding just
15 of that. And I'm going to generalize a bit and obviously
16 I'm going to look at the particulars of your client in
17 making or fashioning and imposing a sentence.

18 Just from the standpoint of incarceration, can
19 there be -- what is the arguments for others who maybe
20 similarly situated in terms of language, the language
21 barrier? And because of their language barrier, they're
22 put into institutions around this country of Mandarin and
23 maybe there's another language -- are not there and say
24 their conduct which got them there is some may say more
25 egregious than that, I'm saying some more egregious than

1 your client. So the basis in which the Court considers
2 putting -- and I know that is a consideration, I
3 understand that. But the Court finds it difficult, the
4 Court would be limited in a lot of situations and
5 incarcerate someone for that very reason. You understand
6 what I'm saying? I guess my point is, I understand your
7 point, is that a basis in which -- and now, may be
8 certainly in this situation, I think Mr. Huang maybe
9 similarly situated. Say we didn't have a person, would I
10 get that this argument with regards to that language
11 barrier for someone else? If they couldn't reasonably
12 meet the basic needs because of the language barrier? Are
13 you following?

14 MR. HOBBS: I believe so, Judge. And I
15 think the answer is you might. But interestingly in
16 exploring that topic in the Stealth and Francis case, the
17 opinion goes on to say contrary to the government's
18 argument, the motion for downward departure based on
19 conditions of confinement is simply judicially imposed
20 prison reform and is therefore inappropriate. This Court
21 is under no illusion of this departure for single
22 defendant or any prison reform or is it the desired role
23 of the Court to do so.

Rather the departure is warranted because the defendant experienced extraordinary stress, fear for his

1 safety due to his being placed 13 and a half months in an
2 institution in which the conditions of confinement were
3 below the conditions of confinement in federal
4 institutions for others.

5 THE COURT: Okay.

6 MR. HOBBS: So I guess the point I'm
7 saying is, Judge, perhaps there is a responsibility for
8 prosecution of these cases that there be better
9 facilities. All we can deal with is the reality of it.
10 And all we have been told if you were to fashion a custody
11 sentence the DSAC says that the judgment should say that
12 it is recommended that the Bureau of Prisons that the
13 defendant be placed in a facility with a Mandarin Chinese
14 speaking staff member. And if there are none available
15 then a facility with a Mandarin Chinese speaking
16 population.

17 And I know that that is just the recommendation,
18 but at least would maximize what we are told that people
19 with a background like Mr. Huang are likely to go to the
20 northeast and with many cases they are dealing with
21 inmates and not correctional officers.

22 THE COURT: Okay. Thank you. I
23 appreciate that.

24 MR. HOBBS: I think I would finally say,
25 Judge, that the overriding goal of 18 U.S.C. §3553(a) is

1 very direct and it is simple in it's words. And it says
2 after you go through the guidelines, sensory advisory, you
3 in your discretion to fashion a sentence that is
4 sufficient, but not greater than necessary to realize the
5 sentencing goals.

6 And we recognize this is a serious offense, but
7 it also lists other factors that are just as important.
8 The background of the defendant, any interruption of
9 medical treatment, we would say the interruption of
10 disability to go home and the analysis to that. Taking
11 into the account the characteristic of the defender, there
12 is a list of things. Some Courts call it the preamble,
13 sufficient but not greater than necessary. And we would
14 ask in the most heartfelt way that a sentence of
15 supervised release on a felony where he will be deported.
16 Hopefully voluntarily, never be able to come back even
17 though fifty percent of his business is in the United
18 States is a sufficient message.

19 Unfortunately, whatever you do, probably may or
20 may not have general deterrence that is unfortunately the
21 world we are in. But is a specific deterrence for Mr.
22 Huang he's has dealt with this case I think appropriately
23 and seriously. You can understand what if there had been
24 a trial of jury selection, opening statement? He
25 forfeited his rights to a trial, he has accepted

1 responsibility, he has serious repercussions, and we are
2 hopeful that the Court will not impose a sentence greater
3 than one year.

4 THE COURT: Okay. Thank you, Counsel.

5 Mr. Casey?

6 MR. CASEY: Judge, this is a serious
7 offense, it is a serious offense that has a pretty
8 significant guideline range for a crime like this. This
9 is a white-collar crime. It was an intent, no actual
10 loss, but never the less the guideline range is 46 to 57
11 months. I think that reflects pretty accurately the
12 seriousness of the offense and the potential harm raised.

13 And when thinking about sentencing it I know
14 that you're left with a plea that is a range that is well
15 below that guidelines range. And, you know, kind of
16 explain how the parties got to that first, but I think the
17 first factor to think about in sentencing this case is
18 deterrence.

19 I mean, this is I don't want to say rare, but is
20 somewhat unusual case in which deterrent is an extremely
21 factor that the Court should consider when they are
22 considering this sentence. Sometimes I hear defense
23 counsel, well, Judge this is a drug case, you know,
24 dopper's don't pay attention to the news, how do you
25 consider deterrence or Judge this was a crime of passion

1 and no one is, you know, thinking of deterrence in that
2 instance.

3 Well, this is a case involving a crime that has
4 become part of our national conversation. Back in the
5 fall there were presidential debates where the questions
6 based to the candidates was what are we going to do about
7 theft of trade secrets from companies in China? This is a
8 significant national problem that US companies are having
9 to deal with. And here's an opportunity to serve
10 significant general deterrence by saying we will punish
11 these crimes. If you come into the United States, if you
12 want to steal our intellectual property, you want to hurt
13 our company's, you want to lead to possibly the
14 unemployment of our workers, we will punish those crimes.
15 And that will have to sophisticated parties, to
16 businessmen, that will have a deterrence effect. It will
17 be noticed and it will, you know, be achieve the factors
18 of 3553(a).

19 In particular, also on deterrence with this
20 particular defendant, our sentencing submission has some
21 reports that, you know, at least gives suggestion that he
22 had done some similar noncompetitive practices with other
23 companies in the US that he had been involved with. He
24 searches out the US companies just like he originally did
25 with Pittsburgh Corning. He tries to get a deal with

1 them. But then takes what he learns from them, does his
2 own thing in China, and comes back and sell the project in
3 the United States. So for this particular defendant there
4 is a deterrence reason to come to a impose a significant
5 sentence.

6 I think on all of the of 3553(a) factors that is
7 the one to keep most in your mind when factoring this
8 sentence here. And the United States asks that sentence
9 to be 18 months.

10 An 18 month sentence in this case given the
11 totality of the 3553 factors is sufficient and no greater
12 than necessary. In fact, it is the minimum sufficient
13 sentence given to properly punish this case. Anything
14 less than that term of imprisonment simply wouldn't be
15 sufficient. And that's even taking into account what is
16 fairly significant and fairly unusual that the defendant
17 is paying a full maximum allowable fine in this case.
18 Even taking that into account. That is punitive, that is
19 part of the punishment, and it is part of what is factored
20 in to the United States asking for a binding sentencing
21 agreement although what the anticipated guidelines would
22 be. But it itself is not enough when looking at the
23 3553(a) factors, you're looking at informing a just
24 sentence. And a just sentence in this case will involve
25 some term of confinement. While that fine is punitive, it

1 is not itself sufficient to properly punish this case.

2 And I think that that also is a topic that
3 touches on some of the things Mr. Hobbs said about the
4 conditions of confinement. You know, in recommending 18
5 months, again, significant variants. The United States
6 understands that time in prison for Mr. Huang will be hard
7 time. It will be difficult. There are language issues.
8 There is the fact that he is white-collar defendant who is
9 a businessman in a different country. But difficult does
10 not mean inappropriate. In this case it would be
11 appropriate for him to serve a term of confinement in the
12 United States. Certainly difficult does not even come
13 close to cruel an unusual or some type of constitutional
14 deficiency. Time is difficult for everyone and the
15 appropriate amount of time would be 18 months for
16 Mr. Huang.

17 Part of the reasons that a term of confinement
18 and a substantial one should be left to the Court should
19 consider is this is a fairly unique case. It is a unique
20 set of facts, it's unusual. There is a sting in a type of
21 case like this. But it is particularly unique about who
22 the defendant is. In this case the defendant is the party
23 that stood to benefit from the crime. In a typical theft
24 and trade secrets case what you have is a foreign company
25 infiltrating or ingratiating itself to an employee of a US

1 company. It pays the employee a certain amount of money
2 to steal proprietary information for it. And who we are
3 able to catch, who the government ultimately catches is
4 that employee. Whether it's when they are leaving the
5 country with stolen documents or there is an e-mail string
6 that we find. And that is a typical case. But the
7 foreign company that was paying for the secrets,
8 committing the fraud, isn't brought before the Court.
9 Isn't brought -- criminal charges aren't brought against
10 them. In this case it is unique in that it's the owner of
11 the company. It's the benefactor. It's the person who is
12 going to financially benefit. It's the person who is
13 willing to invest \$20 million dollars just to ramp up in
14 anticipation of the trade -- this information. I think
15 that shows that this was incredibly valuable and could've
16 been incredibly lucrative to Mr. Huang. He is exactly the
17 person that this crime is aimed at to stop. And in this
18 case we have arrested him. We have convicted him. He is
19 a person that is before you. And he is the person that I
20 would think you need to take the factor, he is the company
21 owner, he is the benefactor. And that is something that
22 should be more fashioned to sentence. It is part of
23 the reason why the government thought it was appropriate
24 that Mr. Qi not serve time, he wasn't going to be the
25 benefactor, he was just an employee. Mr. Huang, however,

1 18 months is really sort of a minimum necessary sentence
2 to satisfy those factors.

3 I also just want to touch on, you know, Mr.
4 Hobbs has stated many times about the history and
5 characteristics of the defendant that you should take into
6 consideration with the immigration factors. It is
7 interesting whether or not there is any immigration
8 consequence for this defendant is itself very speculative.
9 We don't know what ICE will do with this defendant. And
10 it is collateral, it is collateral consequence for what
11 this Court has in front of it, and that is to fashion and
12 impose a just sentence.

13 Whether or not the sentence categorizes him as
14 an aggravated felony I think shouldn't be in this Court
15 consideration. The Court should find a just punishment.
16 If that just punishment finds that this person committed
17 an aggravated felony, then in fact it was an aggravated
18 felony. And he should according to our laws be held
19 accountable for that.

20 And still I don't really think the immigration
21 consequences factor -- I think this Court should factor
22 rather the other 43553(a) factors which we believe would
23 be --

24 THE COURT: Would it be improper if I
25 did consider it?

1 MR. CASEY: Pardon?

2 THE COURT: Would it be improper if I
3 did consider it?

4 MR. CASEY: Well, Your Honor, I did look
5 into that issue actually.

6 THE COURT: Right.

7 MR. CASEY: And I didn't find a clear
8 issue. I didn't see anything to say that it would be.
9 And so I don't think it would be, however, when
10 considering the history and characteristics I think that
11 there are other factors that imply a term of imprisonment
12 greater than a year.

13 THE COURT: And I certainly understand
14 the government's position. I just since you said that I
15 had a question with regard to that. Thank you.

16 MR. CASEY: And I didn't get a
17 conclusive and I didn't see anything to suggest it would.

18 THE COURT: Thank you. Mr. Hobbs?

19 MR. HOBBS: On Page 32 of the sentencing
20 memorandum we are asking that the judgment commitment
21 order for Mr. Huang indicate that he be committed to the
22 custody of the Bureau of Prisons to be imprisoned for a
23 total of time served. And be placed immediately upon a
24 term of 11 months supervised release with whatever
25 conditions the Court deems appropriate.

I believe this case cries out for that. And I will give an example, Judge. If this was a white-collar defendant, America citizen, and you gave him an 18 month sentence. In Kansas City there is a high probability he would get into a federal prison camp in Leavenworth. While he was there within 45 minutes if he needed to talk to an attorney, he could do that or a family member. He would be eligible for release after serving 85 percent to a halfway house and then mainstream back home. None of that is going to apply. In fact, even a simple conversation we have only been able to successfully do is because Yi Sun coming over from St. Louis. Any custody sentence is absolutely more than is necessary to reach the sentencing goals.

I will also point out for the record that the \$250,000.00 dollar fine has been paid in full. We also have tendered for the record the \$100.00 dollar special assessment. We have the \$150,000.00 dollar check from Ms. Sun's law firm that will be coupled with the \$100,000.00 dollar bond. And I'll have the record reflect that similarly like Mr. Qi there is no objection having that bond money being utilized for the fine.

And this isn't an effort to buy one's way out of a penalty. This is a severe penalty. Unlike this hollow words of a penalty being imposed and may or may not ever

1 actually be paid, this is money that has been paid.

2 I would also ask that at the end of the
3 proceedings today that Count II be dismissed.

4 And finally, Judge, on the immigration
5 consequences. I think it is significant because again, if
6 he was an American citizen he wouldn't be facing more
7 indetermined amount of time upon service of his sentence.
8 So that is a factor.

9 And the conditions of confinement we talked
10 about earlier. It's going to be -- the conditions of
11 doing prison should never be part of the penalty. The
12 penalty is the amount of time, not how you do it. That is
13 what distinguishes us from a lot of countries. But the
14 effect of human resources it will be very, very difficult
15 and that is unnecessary to realize deterrence.

16 THE COURT: But arguably that doesn't
17 necessarily necessitate the need not to impose a sentence.
18 That fact alone. Unless there is some constitutional
19 violations to -- I guess that is my point to my question.
20 The fact that that is the situation and may be the
21 situation, does it necessarily necessitate the Court not
22 imposing a sentence? Because if the Court was to follow
23 that, the Court believed that, then people -- anyone who
24 may have had their incarceration which may be more
25 difficult than otherwise someone else had. That would be

1 reason despite the crime in which they are charged.

2 Despite that, my point is that would be reason not to
3 impose or to incarcerate someone?

4 MR. HOBBS: It is a reason to depart
5 downward.

6 THE COURT: Right. Okay.

7 MR. HOBBS: And nor does that say that a
8 sufficient departure would be to complete supervised
9 release.

10 THE COURT: And I understand. And I
11 recognize your client's situation would be a lot different
12 then maybe what I'm suggesting. So I certainly understand
13 that.

14 MR. HOBBS: And again, I want to say one
15 final thing. 3553(a) also has a paragraph called (a)(6)
16 which is proportionate to one another. And again, we
17 respect and appreciate the description, professionalism
18 that the US Attorney's office has bestowed upon both
19 defendants. But how is it that an employee who allegedly
20 would've been the beneficiary is allowed time served and
21 allowed to go home this afternoon. That is sufficient
22 deterrence. But despite all of the factors in the
23 sentencing memorandum somehow Mr. Huang has to do 18
24 months plus face unknown additional time from ICE custody.
25 How is that proportional with one another?

1 I finally point out, Judge, that the materials
2 have a brief statement and allocution that Mr. Huang had
3 translated into English, but he is also prepared before
4 you pass final sentence with the assistance of an
5 interpreter to make a brief state to the Court.

6 THE COURT: And I'm going to allow you
7 Mr. Casey a moment to respond. And then I'm going to
8 allow Mr. Huang to make his allocution to the Court. Mr.
9 Casey.

10 MR. CASEY: Thank you, Judge. Just
11 very, very brief. With regard to Mr. Qi and regard to the
12 proportionality, you know, treating two similar situated
13 defendants similarly. I think the simply answer is they
14 are not similar situated defendants.

15 Mr. Qi was an employee. And I think the facts
16 show he was an employee of Mr. Huang who wasn't involved
17 in the initial trips to the United States to find out this
18 information. He wasn't involved in the planning of either
19 the factory, the company or the trip. Instead, he was
20 just told, hey, you are coming with me to translate. Now,
21 he was charged. Probably so, because while he was here he
22 fully participated in the effort to obtain the stolen
23 information. But nonetheless, he wasn't the mastermind,
24 and there is no indication whether or not that he would've
25 benefited. Certainly not to the degree that Mr. Huang was

1 going to benefit from it.

2 But also importantly, and I think something that
3 factored significantly in to the sentences that -- while
4 the defendants were for logistical reasons plead and
5 sentenced together, Mr. Qi long previously had indicated
6 to the United States that he wanted to plead guilty and
7 was willing to testify at trial in this case. Because we
8 agreed to a binding plea agreement that was of time
9 served, and no additional jail time a substantial
10 assistance motion, you know, wasn't warranted. But that
11 fact, the fact that he was available to cooperate greatly
12 significantly, you know, significantly affected the
13 sentencing decision of the United States. And was
14 something that had previously been on the record and I
15 think addresses that proportionality.

16 THE COURT: Thank you. Mr. Hobbs, if
17 Mr. Huang at this time he can approach the podium. Mr.
18 Huang.

19 MR. HUANG: Honorable Judge, I
20 appreciate very much the work you did on my case. I
21 apologize deeply and feel guilty about the burdens that
22 were to the federal government as well as to the loss to
23 Pittsburgh Corning. I am also sorry that my behavior also
24 impacted my family. And during those four months that I
25 was away from my family, for the full five months of the

1 time that I was away from my family, my family is eagerly
2 awaiting for my return. They miss me very much and they
3 cry and pray for me and are worried about me. And now I
4 got the news that my dad is dying. I feel in despair. I
5 feel so sorry. My behavior has already been punished.
6 I'm guilty and I'm willing to bear the responsibility.
7 And I wish the Courts will consider release as well as my
8 family's situation will be lenient when you give
9 treatment. And when I go back to China I will tell all my
10 family and myself and my friends and people that if you
11 want to do business that you have to understand American
12 laws and you have to obey American laws. I beg the Court
13 to consider time served of incarceration so that I can
14 return to my family and be useful to society and better
15 society. Thank you so much.

16 THE COURT: Thank you, sir. Okay. The
17 Court is again going to take a relatively brief recess to
18 consider Counsel's argument and consider the proffers
19 submitted to the Court before I impose sentence.

20 MR. GADDY: Judge, Can Mr. Qi be
21 released?

22 THE COURT: Yes. And then again, with
23 regard to the record as part of the plea agreement, I
24 don't know was Mr. Qi also with regard to Count II?
25 Because that wasn't made on the record, I don't believe it

1 made on the record in terms of that being dismissed as it
2 relates to Mr. Qi.

3 MR. CASEY: Your correct. The
4 government moves to dismiss Count II on Mr. Qi.

5 THE COURT: Okay.

6 MR. GADDY: And Your Honor, just real
7 brief, I wanted to on the record to thank the government,
8 the agents have been wonderful to work with them. And I
9 want to thank the Court again. Thank you.

10 THE COURT: Okay. Thank you.

11 (THEREUPON, a short recess was had; WHEREUPON,
12 the following proceedings were had.)

13 THE COURT: Okay. Mr. Huang, before the
14 Court imposes sentence in this matter, I do have a few
15 comments I would like to make. As you are aware and as
16 you heard Counsel eluded to, it is the job of this Court
17 to impose a sentence that is sufficient but not greater
18 than necessary to comply with the provisions set forth in
19 18 U.S.C. § 3553. In doing so obviously the Court
20 considers the advisory guidelines. The Court considers
21 the 3553 factors. The Court considers the PSR, argument
22 of Counsel. I know that there were many exhibits
23 proffered to the Court, and the considers that. And any
24 comments you make to the Court, the Court takes all that
25 into consideration in it's attempt to comply with the

1 provisions of the statute.

2 With regard to your argument or your Counsel's
3 argument in request with respect to your sentence, there
4 is very little that the Court may disagree with your
5 Counsel on. The Court had the opportunity to reflect and
6 understands the family back in China, in particular your
7 dad who is ill. The Court has considered the argument
8 with regards to your status if the Court imposes sentence
9 above a certain amount, the representations that your
10 Counsel made with respect to that. The Court has
11 considered the imposition of any sentence and the effect
12 and the argument your Counsel has made with respect to
13 institutions able to meet even your basic needs with
14 regard to the language barrier. The Court recognizes your
15 lack of criminal involvement in the past. The Court
16 further recognizes, I think in part, the Court recognizes
17 and to some extent appreciated your comments that you made
18 with respect to -- and I think it goes to the factor of
19 deterrence. That it would be your thought that you go
20 back, when you go back to alert others that the conduct in
21 which you involved yourself in is criminal in the United
22 States.

23 On the end, I do concur with the government in
24 this respect. I think this crime which you have pled
25 guilty to, I think the most important factor is that of

1 deterrence. I think and I agree specifically and I think
2 generally. I think generally in the sense that the Court
3 needs to fashion or have a sentence that puts some notice
4 to others that if you involve and commit these types of
5 crimes, there is a consequence for it.

6 I think also with regard to you Mr. Huang
7 specifically deter what singularly is business practice to
8 exploit companies many of which you did business here in
9 the United States. The Court does not -- and I know the
10 argument was made with respect to -- and I treat that and
11 I really look at that in terms of disparity. I don't see
12 the disparity as it relates to Mr. Qi. I think clearly by
13 the record and everything the Court has reflected it is
14 clearly different. Mr. Qi is not similarly situated than
15 you. The fact that he got probation the Court recognizes
16 by the record what his role was in it. So with regard to
17 disparity in sentence what the Court could impose in this
18 case, I don't see it. And I don't think the record, upon
19 review of the record, and closer review of the record
20 suggests that Mr. Qi was similarly situated than you.
21 Other than to act as, which was the Court's understanding
22 part of this plea agreement that the Court took, act as
23 interpreter. Clearing knowing what he was doing, however,
24 but significantly different role.

25 Is there any good reason why the Court should
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1 not impose sentence at this time?

2 MR. CASEY: None from the United States,
3 Your Honor.

4 MR. HOBBS: No, Your Honor.

5 THE COURT: Mr. Huang it is the position
6 of this Court that you are hereby committed to the custody
7 of the Bureau of Prisons for a period of 18 months in
8 Count I of this two count indictment.

9 The Court believes that this sentence in the
10 Court's opinion, that one, that reflects the seriousness
11 of the offense. The Court believes this will promote
12 respect for the law and as the Court mentioned I think it
13 will thwart adequate deterrence to others. Generally, and
14 I think more specifically as it relates to you. And I
15 think this sentence is one that is sufficient but not
16 greater than and in compliance with the statute.

17 Further, sir -- can I have counsel approach?

18 (THEREUPON; Counsel approached the bench and the
19 following proceedings were held.)

20 THE COURT: As a practical matter it is
21 difficult for me to address. In terms of supervised
22 release, is it any difference because if his status is --
23 or is it something the Court need not --

24 MR. CASEY: Your Honor, if you want to
25 impose, you know, supervised release until he leaves the

1 country after seven days or something like that.

2 THE COURT: I don't know if it is
3 significant. I don't know if I must. There is a minimum
4 or does that even have --

5 MR. HOBBS: First of all, Judge, I don't
6 think, if you look at the back of the PSR there is no
7 statutory required minimum. They are some guideline
8 minimums so I think --

9 THE COURT: Because it appears that if
10 he's released he may be dealing -- and I just don't know
11 some immigration so I just don't know. You know, I don't
12 know where that will fall. My thought was not to impose
13 because at that point in time I would suspect there will
14 be deportation proceedings whether I put him in custody or
15 whether I didn't. Is that right?

16 MR. CASEY: Yeah, I have no objections
17 to that.

18 THE COURT: Okay. Okay.

19 MR. HOBBS: And Judge, we might as take
20 up now, we are going to ask for voluntary surrender.
21 Approximately sixty days.

22 THE COURT: Okay.

23 MR. HOBBS: I just wanted to let you
24 know.

25 THE COURT: Okay. Yeah. And also on
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1 the record just ask I know you want him placed in an
2 institute in terms of the northeast.

3 MR. HOBBS: Yeah. I will.

4 THE COURT: Okay. Okay.

11 MR. HOBBS: Yes, yes. There is a
12 \$100,000.00 dollar bond we would ask to be used for
13 partial satisfaction. And we have an additional check for
14 \$150,000.00 and we have already tendered the \$100 dollar
15 special assessment.

16 THE COURT: Okay. And that will be
17 applied to the following post by the Court.

Further, the Court will, again, the preliminary
order of forfeiture is finalized at this time.

Further, it is order -- and my understanding
that Mr. Huang has already paid but a \$100 dollar special
assessment which will be due immediately. My
understanding is that he has paid that assessment.

24 Mr. Hobbs, do you want to make a further record
25 or request of the Court?

1 MR. HOBBS: Yes, Judge. Three issues,
2 Judge. First, we would ask that the judgment commitment
3 order will reflect the following recommendation. It is
4 recommended that the Bureau of Prisons the defendant be
5 placed in a facility with a Mandarin Chinese speaking
6 staff member. And if none are available, then in a
7 facility with the Mandarin Chinese speaking population.

8 Secondly, Judge, we ask that the Court allow for
9 a voluntary surrender date of approximately 60 days. It
10 is our experience that this period of time is necessary to
11 find a designated facility and I speculate that that will
12 be especially true in this case. I just proffered for the
13 record, Judge, that the entire period supervised
14 supervision even during the period of time when he was on
15 home monitoring he never had any violations and never
16 tried to evade the country.

17 The final request, Judge, is that I note that
18 our interpreter needs to leave for the airport at 2:45.
19 I'm just advising you that I would have Ms. Yi Sun, who is
20 co-counsel and also fluent in Mandarin go with my legal
21 assistant to the third floor of the Marshall's office and
22 explain to the Marshall that she needs to be able to
23 interpret for the self-surrender card. Typically the
24 Marshall's office will bring a client into custody and the
25 lawyers are kept outside. And so there is no confusion I

1 will have the Marshall's office call you and I'm asking
2 your discretion to allow that. Whatever impact you have.
3 I know the Marshall's determine their own procedures, but
4 I think under the circumstances we need to get a
5 self-surrender card with the assistance of Ms. Sun.

6 THE COURT: That's fine. If that is the
7 case, just call up to chambers.

8 With respect to the voluntary surrender date, is
9 there any objection from the government?

10 MR. CASEY: Your Honor, it's been my
11 practice to, but in this case I won't because he has been
12 compliant. I don't think that it will make a difference
13 if I do make an objection so no objection, Your Honor.

14 THE COURT: Okay. Well, I wanted to
15 give you the opportunity, Counsel.

16 MR. CASEY: Thank you.

17 THE COURT: So the voluntary surrender
18 date will be March the 29th, at 2 o'clock. And the Court
19 will also include in the judgment an institution where
20 Mandarin is spoken. I make sure we make a record of that
21 and we will get that in the judgment.

22 MR. HOBBS: If it helps the Court it is
23 on page 30 of the sentencing memorandum.

24 THE COURT: Okay. Thank you.

25 Mr. Huang, at this time both the government and
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1 the defendant you are advised of your respective rights to
2 appeal. What the Court has done here today you can do so
3 pursuant to 18 U.S.C. § 3742. But only to the extent that
4 it wasn't waived in the plea agreement. You can loss your
5 right to an appeal if you don't timely do so. If you
6 don't timely file your appeal here in District Court,
7 Federal rules of criminal procedure give you 14 days after
8 entry of judgment to file a notice of appeal on your
9 behalf. If you are unable to pay the cost of the appeal
10 you have the right to apply for leave to appeal in forma
11 pauperis. With that said, is there anything else for the
12 record?

13 MR. CASEY: Your Honor, just for the
14 record, I wanted to dismiss Count II or move to dismiss
15 Count II with regards to Mr. Huang.

16 THE COURT: Okay. And that will be
17 noted.

18 MR. CASEY: Nothing else from the United
19 States.

20 THE COURT: Thank you. Okay. Anything
21 from the defense?

22 MR. HOBBS: No, Your Honor.

23 THE COURT: Okay. Thank you, Counsel.
24 That will conclude the hearing.

25 Well, Counsel. Mr. Hobbs, and I don't know as a
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1 practical matter the probation officer -- I know
2 throughout this there was an issue with the visa expiring?

3 MR. HOBBS: Right. That's February
4 27th.

5 THE COURT: Will there be an -- and I
6 don't know. Would that effect with me setting the
7 self-surrender?

8 MR. HOBBS: Well, what could happen,
9 Judge, is and Mr. Versseld has explained this in our
10 sentencing memo. And again, he has a lot of experience
11 when it comes to immigration, Judge. Once you over stay
12 your visa that is going to be a separate issue that ICE
13 could apprehend him on. Mr. Versseld is going to try and
14 avoid that.

15 THE COURT: Okay.

16 MR. HOBBS: If there is an issue we will
17 bring it to the Court's attention.

18 THE COURT: Okay.

19 MR. HOBBS: I think Mr. Versseld would
20 say, Judge, that his hope is that ICE will honor the
21 Court's sentence.

22 THE COURT: Okay. Right.

23 MR. HOBBS: And his experience has been
24 that typically ICE will do that. And so if he explains
25 that he is on self-surrender, while they legally could

1 take him into custody once he over stays his visa status
2 as a separate issue from aggravated felony.

3 THE COURT: Okay.

4 MR. HOBBS: And he is hopeful that that
5 will not happen. If it does, we'll bring it to the
6 Court's attention and deal with it then.

7 THE COURT: Well, thank you. I've been
8 getting more and more issues with ICE.

9 MR. HOBBS: Right.

10 THE COURT: And I don't know if I should
11 worry about it, you know, there is just so much that goes
12 on and it effects how I can, you know, there are tension
13 hearings and, you know, it is frustrating from my
14 standpoint at least.

15 MR. HOBBS: And right. Ideally, Judge,
16 if we had a designated facility within February 27th date

17 --

18 THE COURT: Right.

19 MR. HOBBS: -- that we can go to, but
20 typically it doesn't occur that quickly.

21 THE COURT: Right.

22 MR. HOBBS: And particularly given the
23 Mandarin issue, I don't think it will.

24 THE COURT: Right.

25 MR. HOBBS: But we will keep the Court
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1 informed.

2 THE COURT: Thank you. I appreciate it.

3 Thank you.

4 (THEREUPON, the following proceedings were
5 adjourned.)

6

7 CERTIFICATE

8 I certify that the forgoing is a correct
9 transcript from the record of proceedings in the
10 above-entitled matter.

11

12 March 28th, 2013

13 /s/ Denise C. Halasey
14 Denise C. Halasey, CCR
U.S. Court Reporter